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of
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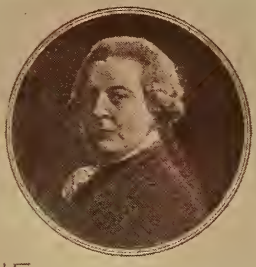

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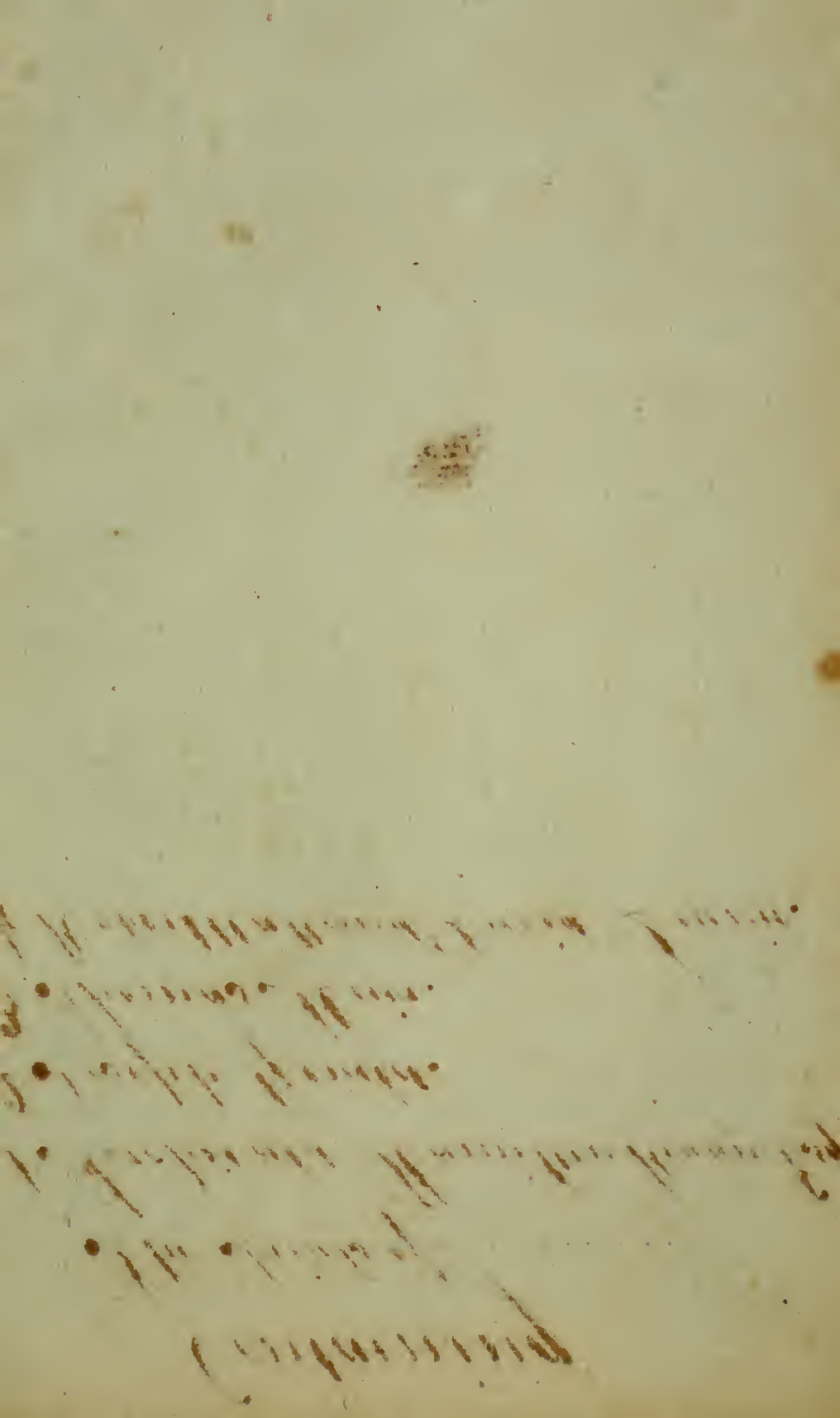

OMNE SOLUM FORTI PATRIA.

JOSEPH GERRALD.

A Delegate to the British Convention.

New-York, Published by Sam.l Campbell. Oct.r 18.th 1794.

John Adams
1794

THE TRIAL OF JOSEPH GERRALD,

DELEGATE FROM THE

LONDON CORRESPONDING SOCIETY,

TO THE

BRITISH CONVENTION.

BEFORE THE

HIGH COURT OF JUSTICIARY AT EDINBURGH,

On the 3d, 10th, 13th, and 14th of March, 1794.

FOR SEDITION.

TAKEN IN SHORT-HAND BY MR. RAMSEY.

NEW-YORK:

PRINTED AND SOLD BY SAMUEL CAMPBELL,

No. 124, PEARL-STREET.

1794.

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PREFACE.

THE importance of the following trial to the Public at large is too well known to need any comment on that head from the Editor; nor would he deem it neceſſary to ſay any thing in addition to ſo valuable a publication, by way of preface, were it not that the Public expectation has been ſo greatly alive, and its impatience in no ſmall degree excited by a ſeeming delay in bringing it out. The Editor, in juſtice to himſelf, cannot ſuffer it to appear, without adding a few words in his own juſtification, and requeſting that the Public will believe his aſſurance, that every expedition has been uſed on his part to bring it forward earlier; but as it is the cuſtom of the ſhort-hand writer to leave blanks for the ſeveral quotations, it became a matter of greater difficulty to get theſe filled up, with exactneſs and preciſion, than can well be conceived by thoſe who are not very converſant in theſe matters; eſpecially as Mr. Gerrald was removed from Edinburgh ſo ſoon, that the editor could not avail himſelf of his aſſiſtance in this reſpect, except in a very ſlight degree, before his departure; and having had occaſion to make the application to him, from time to time, on that head ſince his arrival in London, the unavoidable delays attending communications at ſuch a diſtance, rendered it impoſſible to publiſh the Trial ſooner.

When it is conſidered that in a matter of ſo much moment to the rights, liberties, and privileges of every Briton, as this celebrated trial involves, a trial which has been advocated in a ſtile ſo truly brilliant and diſtinguiſhed, both by the learned and ingenious counſel on the relevancy of the libel, and by Mr. Gerrald, the Pannel, whoſe literary fame and ſplendid talents are as much admired, as the ſeverity of his ſentence is lamented; from theſe circumſtances it is preſumed that no blame can be attached to the Publiſher, whoſe aim has been to have the Trial impartially ſtated and accurately laid before the Public.

EDINBURGH, MAY 3, 1794.

THE

TRIAL

OF

JOSEPH GERRALD.

THE Members of the Court of Juſticiary aſſembled preciſely at ten o'clock, in the forenoon. Mr. Gerrald appeared, and placed himſelf at the bar.—

His Majeſty's Advocate, for his Majeſty's intereſt, having been, in the uſual form, called againſt the pannel,

Mr. Gerrald ſaid, My lord, I underſtand I am authorized to demand that a liſt of my exculpatory witneſſes be read out in Court before the Trial proceeds.

Lord Juſtice Clerk. The criminal libel muſt be read firſt—that is the firſt thing to be done.

Lord Advocate. Before your lordſhips proceed to reading the libel, I feel it my duty to tell the pannel, that if he means to perſevere in an application which he ſignified to me yeſterday, by letter, the proper period for him to do it is at this moment, before the indictment is read.

Mr. Gerrald. My lords, as I am totally ignorant of the law of this country, being a native of England, I applied to ſeveral gentlemen of the profeſſion, to advocate my cauſe; they unanimouſly refuſed—in conſequence of which, I wrote a line to the Lord Advocate, as he has ſtated, mentioning that I ſhould certainly make an application to the court to appoint me counſel. Your lordſhips very much lamented, that in former caſes, counſel had not been applied for; and, though the Court are bound to act as counſel for the priſoner, yet the pannel, no doubt, wiſhes to avail himſelf of every advantage that he can. I ſtand peculiarly circumſtanced, becauſe, not being a native of this country, and being ignorant of its laws, without an advocate, I ſhould be deprived of the benefit of their benignant interpretation, as the public proſecutor will no doubt ſtate the charge as ſtrongly as he can on the part of the Crown; I therefore offer it as a ſuggeſtion to your lordſhips conſideration.

Lord Juſtice Clerk. What do you ſay to this, my Lord Advocate?

Lord Advocate. My lord, I don't ſee that there is any thing put

to me by the pannel; it ſeems to be an application to the Court: however, I will ſtate, in a very few words, what occurs to me; and I wiſh that the pannel ſhould hear what I ſay, and that the gentlemen of the jury, and of the country at large, ſhould know what I have to ſtate.

My lord, while this Britiſh convention, or what I never ſhall ceaſe to term it, a conſpiracy againſt the conſtitution of this country, aſſembled for many days within this city, and when they had proceeded, by my information, to a length which called upon the officers of public juſtice to interfere, I had occaſion to direct thoſe ſteps which appeared neceſſary for an enquiry into the ſubject; and, upon the morning of the 5th of December, the ringleaders of this convention (and this pannel one of them) were apprehended. My lord, the neceſſary inveſtigations took ſome time ere they were completed; but it was my habit to bring thoſe who appeared to me the moſt guilty, to a fair trial before their country, as early as poſſible. The firſt perſon that I brought forward in the liſt was the man who appeared to be moſt guilty, I mean Skirving, who ſtood trial, in this Court, upon the 6th of January; and the indictment that I felt it neceſſary to bring next in order, was the charge againſt the pannel now at the bar, which was ſerved upon him in the month of December, and the day fixed for the 8th of January. The day after the libel was executed upon him, at his reſidence in Edinburgh, I received from him a letter in which he appealed to my humanity as well as juſtice, that I ſhould conſent to a delay of his trial for a fortnight, that he might return to England, and ſettle the affairs of a family dependent upon him. I inſtantly acceded to his requeſt, and gave him more than he aſked; I gave him till the 27th of January; and it appears, that upon the evening of Friday the 24th of January, from his own account of the matter, he left London, which would have brought him into this city, a few hours, by the utmoſt poſſible expedition, a very few hours before his trial was to commence. By the accidental circumſtance of a heavy fall of ſnow, he was prevented from reaching it that morning. Your lordſhips and the jury know what paſſed upon that occaſion. I then felt it my duty to bring before the Court for trial, the young man who ſits at his right hand, [Mr. Charles Sinclair] and he did not ſtate any refuſal of my brethren to plead; as I truſt they will do, every cauſe which the higheſt or the meaneſt criminal is entitled to ſtate, at that bar. I cannot therefore perfectly credit that what Mr. Sinclair received ſhould be denied to Mr. Gerrald. But, if it is ſo, conſidering that he ſat this day fortnight, at the ſide of that perſon, and I indulged him again at his own requeſt, telling him, that he need not attend laſt Monday, but that this preciſe day was the day on which I determined to go to trial with him. A fortnight afforded him ſurely opportunity enough to have applied to your lordſhip's juſtice; and every counſel at the bar would, I am ſure, have appeared and ſtated for him every thing that it was competent for him to ſtate. But at four o'clock yeſterday, I receiv-

ed from him a letter, the purport of which he has now ſtated; and I ſhould feel myſelf acting only in the proper and due execution of my duty, if I were to argue to your lordſhips to refuſe that application. But there are circumſtances which I know, and which I truſt will enter into your lordſhips conſideration in giving your opinion upon this application. I hope and truſt that the adminiſtration of the criminal juſtice of this country, however calumniated, however aſperſed, is able to ſtand the teſt in competition with the adminiſtration of the criminal juſtice of England, or of any country upon the face of this earth. And, late as he comes with his demand, although, perhaps in a few hours, I muſt leave this country to attend my public duty in London, that can be no objection; the conduct of the criminal juſtice of this country remains in abler hands than mine. I truſt your lordſhips (without affording a precedent to other pannels to come with an expectation of being liſtened to upon ſo late an application) will accede to his requeſt, for theſe reaſons; and to ſatisfy Mr. Gerrald, that if he has come to this country, a ſtranger to its laws, and if he has preſumed to offend highly, as I charge that he has, that he has not received that ſtrict adminiſtration of juſtice, in this country, which he would in his own, but that he has received that indulgence which calumny itſelf cannot reach.

Lord Juſtice Clerk. The pannel is certainly very late in his application, at the ſame time in the circumſtances of this caſe, I am not for cutting him ſhort, however late he may be. I think he is right in making application for the aſſiſtance of counſel as a ſtranger to this country; and I don't ſee that he can be ſuppoſed to know the laws of this country. I think he is right, and I am, for my own part, for giving him counſel. What do your lordſhips ſay to it?

Lord Henderland. I own it is my opinion that this pannel, and every pannel, whatever be the charge againſt him, ſhould come to your lordſhips bar prepared and aſſiſted by counſel. It is very true, that the judges are counſel for the pannel, to a certain degree; but their duty is limited; in the firſt place upon the relevancy of the indictment, to ſee that no charge ſhall be admitted againſt the pannel which does not neceſſarily and logically infer the crime; the next part of their duty is to take care that no evidence ſhall be admitted but what is legal and unexceptionable; the third part of their duty generally falls upon the preſiding judge to addreſs the jury upon the evidence, as by act of parliament, and to ſtate it to them fairly. If any error is committed, I dare ſay the court would interfere: that has never been the caſe, and I hope never will, while your lordſhip ſits as judge; but there are caſes in which a counſel may be of great uſe to a man: arguments may be made uſe of which might otherwiſe have eſcaped. I think he ought to be aſſiſted by counſel; and therefore I am extremely willing that he ſhould, though I think this gentleman has come exceedingly late indeed. I am not ready perhaps to enquire, becauſe I cannot know what were his motives for being

ſo late in his application; but I cannot ſuppoſe he could be ignorant of the right he had to apply for counſel. And I muſt regret too that my Lord Advocate is going to attend his duty in parliament who has ſo well and ably conducted the other trials; and in whoſe humanity, as well as abilities, I think this country may place great confidence. I muſt regret that he is obliged to be abſent: yet notwithſtanding that, I agree with your lordſhip in deſiring that this man ſhould be aſſiſted by counſel, and that he ſhould ſuggeſt who are the gentlemen that he wiſhes to have. I think that is the proper way; the Liſt of Faculty is open to him, and I will venture to ſay, there is not a man in it but what is fit in proportion: ſome of them may be in experience more or leſs able, but there are none of them but what may be very well intruſted with his defence. However, in order to give him every indulgence, he ſhall have his choice; at the ſame time recommending to him not wantonly to interfere with the ſuperior avocations of a gentleman at the bar, whom the Court are not induced to trouble with impoſitions upon this head, from a pannel.

Lord Juſtice Clerk. Have you an agent?

Mr. Gerrald. No, my Lord; I have applied to two or three, and they have refuſed. I applied to a gentleman to whom I have not had the honour of being long known, but knows me and my connections extremely well, and who would undertake my cauſe, but for reaſons which I am not authorized to tell in Court. Mr. Laing is the only gentleman whoſe refuſal I have authority to mention. The two gentlemen I would wiſh to employ, are the Dean of Faculty and Mr. Laing with your lordſhip's approbation.

Lord Juſtice Clerk. If the Dean of Faculty does not object; but if he ſhould, he is a gentleman whoſe attendance we cannot compel.

Mr. Gerrald. If the Dean ſhould refuſe, I ſhall prefer Mr. Fletcher.

Lord Juſtice Clerk. We ſhall juſt now name Mr. Fletcher and Mr. Laing.

Lord Eſkgrove. I think you had better ſuggeſt one or two more, in caſe of any accident, that they cannot attend.

Mr. Gerrald. I feel extremely the indelicacy, and would rather be deprived of the benefit of counſel, than drag any gentleman into an office the duties of which he would reluctantly fulfil.

Lord Juſtice Clerk. Even without the interference of the Court, I think no gentleman ought to refuſe to defend a pannel, whatever the nature of his crime might be. Now, name another.

Mr. Gerrald. I have the honor of being known to Mr. Gillies.

Lord Juſtice Clerk. Will you name a fourth?

Mr. Gerrald. No, my lord; they will be quite ſufficient.

Lord Juſtice Clerk. Now, name an agent.

Mr. Gerrald. I will leave it to your lordſhips, if you pleaſe.

Lord Juſtice Clerk. No, you muſt name one yourſelf. Name two, and you will be ſure of one or other.

Mr. Gerrald. Mr. James Gibſon, and Mr. James Campbell.

Lord Juſtice Clerk. Now I am ſure you muſt be conſcious that you have had all kinds of indulgence; but you muſt be ready next Monday.

Mr. Gerrald. As to myſelf I am perfectly ready to go on now with the defence which I originally intended to have made.

Monday, March 10, 1794.

The Court met agreeable to adjournment, when Mr. Gerrald again placed himſelf at the bar. The Aſſize being called over, and the Lord Juſtice Clerk having deſired him to liſten to his indictment,

Mr. Gerrald ſaid, my Lords, I feel myſelf under the painful neceſſity of objecting to the Lord Juſtice Clerk ſitting upon that bench, upon this plea, that his lordſhip has deviated from the ſtrict line of his duty, in prejudging that cauſe in which my fortune, and my fame, which is more precious to me than life, is actually concerned. I beg, therefore, that that (*holding a paper in his hand*) may be made a minute of this Court. My lords I am totally ignorant of the mode of conducting the evidence, and therefore ſhall rely upon your lordſhips candor for ſetting me right when I am wrong; and I underſtand your lordſhips are counſel for the priſoner, equally with thoſe appointed by the Bench.

Lord Henderland. You muſt read it.

(*Mr. Gerrald then read as follows*)

" Joſeph Gerrald ſtated, that before proceeding to trial upon the criminal letters raiſed againſt him, he muſt take the liberty of declining the Lord Juſtice Clerk, as having diſqualified himſelf from judging in the preſent queſtion, by having prejudged it. In order to ſhow that this objection was not made at random, Joſeph Gerrald offered to prove that the Lord Juſtice Clerk had prejudged the cauſe of every perſon who had been a member of that Aſſembly calling itſelf THE BRITISH CONVENTION; inaſmuch as he had aſſerted, in the houſe of James Rochead, of Inverleith, that " the Members of " the Britiſh Convention deſerved tranſportation for fourteen years, " and even public whipping;" and, that when it was objected by a perſon preſent in company, that the people would not patiently endure the inflicting of that puniſhment upon the members of the Britiſh Convention, the ſaid Lord Juſtice Clerk replied, " that the " mob would be the better for the ſpilling of a little blood." I pray that this may be made a minute of the Court.

(*The Lord Juſtice Clerk then left the Chair, which was taken by Lord Henderland.*)

Lord Henderland. Have you ſubſcribed it?

Mr. Gerrald. No, my lord; I did not know that that was neceſſary. (*Subſcribes it.*)

Lord Henderland. Do you wiſh to be further heard upon it?

Mr. Gerrald. I deſire to have the matters alledged ſubſtantiated by evidence.

Lord Henderland. Your lordſhips have heard the minute of the Court, concerning that reſpectable judge who has the honor to preſide as Vice-Preſident, in this Court, in the abſence of the Lord Juſtice General. My lord, it is a thing perfectly new in the annals of this Court; nor is there one inſtance to be found in our records upon the books of adjournal. My lords, you have heard the nature of the complaint, which is as extraordinary as it is unprecedented; and it will become you, my lords, well to weigh what is the import, and what ought to be the legal effect, of ſuch an objection offered, in ſuch extraordinary circumſtances, and at ſo early a period as this. You had it in a different form indeed, in the caſe of Margarot, but you will conſider it in this new form, in this new guiſe which it has aſſumed; you will conſider how far it is important in its nature, or how far it is the ſame that was offered in the caſe of Margarot; you are not prohibited from forming a different judgment upon it now from what you might have done then; but I thought it neceſſary to bring theſe matters under your lordſhips view, before you proceed to give your opinion upon this ſo unprecedented and extraordinary a minute. It is now ſubmitted to your conſideration.

Lord Eſkgrove. My lords, this objection which comes before your lordſhips is a novelty in many reſpects; and I don't think this pannel at this bar is well adviſed in making it: what could be his motive for it I cannot perceive. He has the happineſs of being tried before one of the ableſt judges that ever ſat in this Court; but he is to do as he thinks fit. I am ſure he can obtain no benefit if he gains the end he has in view; and therefore I cannot perceive his motive, unleſs it is an inclination, as far as he can, to throw an indignity upon this Court.

As to the objection, I think there is no validity in it. In a former caſe, an attempt was made to ſtart the ſame objection, by the perſon then to be tried. I don't obſerve that this gentleman ſays his name was ever mentioned in that converſation, or that any thing was ſaid of him individually; but he ſays it was an expreſſion, in common converſation, importing that honorable judge's opinion, that the members of the Britiſh Convention ſhould be tranſported for fourteen years, and even publicly whipped. I do not conceive what intereſt this gentleman has in it; he has not yet acknowledged himſelf a member of that convention. My lord, one man's conduct may be different from another's in that aſſembly. As to the expreſſion, it could only import, hypothetically, that, if that convention was guilty of the crimes ſtated againſt them, of that attempt to overthrow the conſtitution of their coun-

try, to create rebellion and insurrection, in the country, then the punishment adapted to such an offence, was, in his opinion, transportation and public whipping. What is there in that more than in the opinions given in this Court already, in causes of this kind? My lords, it has been said by all your lordships, in this Court, that if the persons who have been convicted had been brought to trial before the alteration of the treason law by the union, they would not have been tried as persons liable to arbitrary punishment, but recognizable as high treason; and the person at the bar under that accusation would have been tried for his life, and on conviction would have suffered the pains of death and forfeiture. If therefore by an alteration of the criminal law of the land, this crime, which goes to destroy the constitution of the country, is made an arbitrary punishment, that punishment must be the highest arbitrary punishment that can be inflicted; and therefore I see nothing in that opinion which imports more than your lordships have all said in this Court. I think it was nothing more than a general opinion, given upon the nature of the offence, as charged, that it was a convention of persons meeting to overturn the happy constitution of this country; and giving his opinion that such an offence merited that punishment. I am sure that can be no disqualification from sitting in this Court, where the same opinion has been given by all your lordships. It is stated here, that it was objected by a person present in company, that the mob would not patiently endure the infliction of that punishment. I don't know what could be the motive of any person to make such an observation, if they had any reason to believe such a thing: for my part, I think it is a most erroneous observation; for I have a better opinion of the mob, as it is called, the people of this country, than to think that they are capable of associating for acts of violence in defiance of the laws. I think better of the people of this country, than that they would meet together for the purpose of stirring up insurrection and violence. But, my lord, it is no more than saying this, that a mob, if they should be so ill-advised as to break out into an insurrection, with an intention to overthrow the constitution, they would not merit compassion, in case the magistrates should be reduced to the disagreeable necessity of resisting force by force; and that is an observation, which, I dare say, has been made by a thousand people besides his lordship; and it cannot be supposed that that was to prejudicate the trial of this gentleman, who will by his lordships and by the Court, be treated as an innocent man, till he is found guilty. My lord, to say that that is prejudicating him, because he spoke of punishment with one exception (a corporal punishment) which had been inflicted upon persons who had before been convicted, is carrying the objection beyond all degree of reason; and I can ascribe it to nothing but malevolence and—desperation.

Mr. Gerrald. My lord, I come here not to be the object of perſonal abuſe, but to meet the juſtice of my country: had I been actuated by ſuch motives, I am ſure I ſhould never have returned to this country.

Lord Henderland. I deſire you will behave as becomes a man before this High Court; I will not ſuffer this Court to be inſulted.

Mr. Gerrald. My lord, far be it from me to inſult this Court—

Lord Henderland. Be ſilent, ſir.

Mr. Gerrald. My lord—

Lord Henderland. I deſire you will be ſilent, ſir.

Mr. Gerrald. My lord, I am ſure that my coming to this country ſhews that I am actuated by the pureſt principles of juſtice.

Lord Eſkgrove. If I have ſaid any thing wrong, I will very readily retract what I have ſaid; but I was making an apology for this objection, that I cannot aſcribe it to a ſolid objection of counſel, none of whom have ſtood up to ſupport it. I meant nothing more by what I was ſaying; I am very ſorry for the expreſſion I made uſe of, and aſk the gentleman's pardon; but, upon the whole, I think the objection an irrelevant one.

Lord Swinton. My lord, an objection of this kind, coming from any other man, I ſhould conſider as a very high inſult upon the dignity of this Court; but, coming from him, ſtanding in the peculiar ſituation in which he now ſtands at the bar, charged with a crime of little leſs than treaſon, the inſolence of his objection is ſwallowed up in the atrocity of his crime. He has objected againſt a moſt worthy and reſpectable judge, that being in a public company at Inverleigh, he ſaid that the members of the Britiſh Convention ſhould be whipped and tranſported; and upon a lady ſaying the mob would not ſuffer it, his lordſhip is ſaid to have anſwered that in that caſe they would deſerve to loſe a little blood. It appears to me, that there is not the ſmalleſt relevancy in this objection. There is no doubt but there are reaſons why a judge may be declined according to an act of parliament: the law is, that if a judge has any intereſt in the cauſe, that he can either win or loſe by it, if there is capital enmity between a judge and the party, that might be a good reaſon for his being declined.

Mr. Gerrald. My lord—

Lord Henderland. Once for all, ſir, I muſt inform you that you are not entitled to interrupt the judges: if you have any thing to obſerve, after any one of them is done, you will be permitted to ſpeak; but I deſire you will behave with that decency which becomes you.

Mr. Gerrald. My lord, I reſpect the laws of my country, and I ſhould not reſpect myſelf if I did not; which I flatter myſelf I ſhall always do: for, I hope, I never ſhall do any thing which can conſtitute a ground for ſelf-degradation in my own opinion: but I ſpoke to his lordſhip, becauſe I underſtood his lordſhip had addreſſed me, and that was the only reaſon of my ſpeaking.

Lord Swinton. My lord, I say there is no relevancy in this objection. If any judge here shall have enmity against any man whatever, standing at that bar, it might be a good reason for his being declined; but in this case it would be absurd. I never heard of this man's name in my life, before he came into this country, and I dare say his lordship never did; and what interest he can have except that of compassion for a man in that unfortunate situation, I cannot tell; and I appeal to the feelings of every man; I say it is impossible. My lord, there is not the smallest ground to suppose that this man was prejudicated by that conversation; and therefore I think the objection is irrelevant.

Lord Dunsinnan. My lords, this objection is new, and not a little extraordinary; it very much surprised me. I shall enter into no observations upon his conduct; and I think your lordships ought to pay no attention to it, either in one shape or another.

Lord Abercrombie. My lords, as to the objection made by this pannel—if a judge is guilty of a breach of the sacred trust reposed in him, he is amenadable to the laws of his country, and may be impeached for the offence; he may be punished for it, and the law of this country has provided against it; but, my lord, that is not the shape in which this objection comes before you; it comes in the shape of a disqualification. Now, my lords, I know of no circumstance whatever which can disqualify a judge from sitting to discharge his duty, except those in the act of parliament. But, my lord, this objection applies equally to every judge who sits here. Sure I am, that upon every occasion when I have had an opportunity of giving my opinion upon the subject, I have never hesitated to say that I considered the British Convention as a conspiracy of a most dangerous and of a most criminal nature.

My lord, with regard to the unhappy man at the bar, there is not a doubt that the presumption of law is in his favour; he is presumed to be innocent of the charges laid against him, till he is found guilty by a verdict of his country. But I have no hesitation in saying now, in the presence of that man, in the presence of his counsel, and in the presence of this audience, and of your lordships, that if he should be convicted of the crime charged against him in this indictment, I shall say that even fourteen years transportation is too slight a punishment for an offence of such magnitude. My lord, in the case of Margarot I had a doubt, but that doubt was whether fourteen years transportation was not too slight a punishment for the offence, aggravated as it was by a variety of circumstances, and in particular, by the very improper and indecent conduct of that man to the Court in the course of his trial; which, for his own sake, I hope the pannel now at the bar will not do.

Lord Henderland. Your lordships have delivered your opinions so fully, and placed this question in so many different point of view, and expressed yourselves in so much better language than I can do, that it would be highly improper in me to go over the same grounds

again; I ſhall only ſay that I perfectly agree in the opinion of the Court, that this objection is not well founded. My lords, it appears to have been a tranſient converſation, with reſpect to the crime of ſedition, and the puniſhment due to it: but is that to be the ground of declining a judge? I appeal to he feelings of any man who has converſed upon the ſubject; I appeal to every juryman who has tried theſe caſes; I appeal to every juryman who will try theſe caſes; would he think himſelf bound in the ſmalleſt degree by ſuch a converſation? would he think the caſe prejudged one iota? would he think himſelf hindered from examining the evidence, or from weighing the arguments with the greateſt firmneſs, and with the utmoſt accuracy? I am ſure he would not. To ſay that theſe words ſhall be held by this Court as a prejudication of any judge or juryman (for I know not how far the objection may go) might lead to the moſt extenſive and the moſt dangerous conſequences, for ought I know, I don't ſay it is ſo, but it might go even to the excluſion of all trials. My lords, taking it in this point of view, the words ſaid to be expreſſed in the manner in which they were expreſſed, and the occaſion upon which they were expreſſed, muſt all go together; and it is admitted they are ſo far fairly told you. It is not ſaid that this was a judicial opinion given by this learned judge, and therefore was not any thing like a prejudication of what he might do in this Court; and we are to judge, whether by fair inference it ought to be held ſo, whether by conſulting the common ſenſe of all mankind, for that is the teſt of all criminality. And here, my lord, a reſpectable judge, an honour to his profeſſion and abilities, whom I know to be a man of the higheſt honor and ſtricteſt integrity, is to be tried before us; for we are his jury, and we are called upon by our great oaths, as judges, and lying our hands upon our hearts, to ſay that this reſpectable judge, by what is here alledged, is no be rendered incapable of ſitting in this chair—to be degraded from his office, and held unfit to judge in the moſt important trials in this country; where his abilities, ſteadineſs, and knowledge in law, are moſt required—I cannot go ſuch a length—I think it is contrary to law; and that therefore the objection is irrelevant.

The objection was repelled.

(*Lord Henderland then left the Chair, and Lord Juſtice Clerk reſumed it.*)

Lord Juſtice Clerk. Joſeph Gerrald, attend to the criminal libel that is to be read againſt you.

(*The indictment was then read by the Clerk of the Court, of which the following is a true copy.*)

GEORGE, &c. WHEREAS it is humbly meant and complained to US, by our right truſty ROBERT DUNDAS Eſq. of Arniſton, our Advocate for our intereſt, upon JOSEPH GERRALD, of Hart-ſtreet, Bloomſbury Square, London, and, preſently or lately, reſiding in the Black Bull Inn, head of Leith Walk, in the pariſh of

St. Cuthberts and ſhire of Edinburgh; THAT, by the laws of this, and all other well governed realms, SEDITION is a crime of an henious nature, and ſeverely puniſhable: YET TRUE IT IS, AND OF VERITY, That the ſaid Joſeph Gerrald, above complained upon, has preſumed to commit, and is guilty actor, or art and part, of the foreſaid crime; IN SO FAR AS, a number of ſeditious and ill-diſpoſed perſons having illegally aſſembled, at Edinburgh, during the months of October, November, and December, 1793, the ſaid Joſeph Gerrald, above complained upon, did come into this country, for the purpoſe of joining and aſſiſting theſe perſons, and became a member of their illegal and ſeditious aſſociation and meeting; which illegal and ſeditious aſſociation and meeting, at firſt aſſembled under the deſignation of a "*General Convention of the Friends of the People,*" but thereafter, preſumptuouſly and ſeditiouſly, aſſumed the name of "*The Britiſh Convention of the Delegates of the Peo-*" *ple, aſſociated to obtain Univerſal Suffrage and Annual Parlia-*" *ments;*" and did in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonſtrate that their purpoſes were of the moſt dangerous and deſtructive tendency, hoſtile to the peace and happineſs, and tending to ſubvert the conſtitution of this realm; imitating, in the form and tenor of their proceedings, the Convention of France, the public and avowed enemies of this country, and with whom Great Britain then was, and ſtill is, at war; the members calling each other, at their meetings, by the name of *Citizen;* dividing themſelves into *Sections;* receiving reports from ſaid Sections; ſome of which bear date, "*Liberty Court.*" "*Li-*" *berty Stairs*" *Liberty Hall,*" "*Firſt year of the Britiſh Conven-*" *tion one and indiviſible;*" and ſome of which have *Vive la Convention* prefixed to them, and end with *ca ira;* inſtituting *Primary Societies, Provincial Aſſemblies,* and *Departments;* appointing committees of various kinds, ſuch as, of *Organization,* of *Inſtructions,* of *Finance,* and of *Secrecy;* denominating their meetings *Sittings; granting honors of Sittings;* making *honourable mention* in their minutes of *patriotic donations;* and inſcribing their minutes, with the *firſt year of the Britiſh Convention:* AND MOREOVER, the members of the ſaid ſeditious aſſociation, under the deſignations aforeſaid, did, at times and place above mentioned, and particularly, in a room or Maſons Lodge in Blackfriar's Wynd, in the city of Edinburgh aforeſaid, hold various ſeditious and illegal meetings, and did in ſaid meetings, wickedly and feloniouſly, make harangues and ſpeeches, as well as motions and reſolutions, of a ſeditious tendency; the ſubſtance of all which was, under their authority, at leaſt with their knowledge and approbation, not only minuted, but publiſhed in a newſpaper, publiſhed at Edinburgh, entitled "The Edinburgh "Gazetteer," and through that medium circulated among the liege: AND the ſaid Joſeph Gerrald not only approved of and concurred in theſe wicked and ſeditious motions and reſolutions, but did

wickedly and feloniouſly make harangues and ſpeeches, and take an active part in all the illegal proceedings of the ſaid aſſociation, was frequently named, and acted as a member of their committees, and as Preſident or Chairman of the aſſociation. AND PARTICULARLY, upon Thurſday the 21ſt day of November 1793, or one or other of the days of that month, or of the months aforeſaid, the ſaid Joſeph Gerrald, did wickedly and feloniouſly addreſs the ſaid illegal and ſeditious meeting, when aſſembled and reſolved into a Committee, for the purpoſe of conſidering of a Plan of Union, in a ſpeech of the following, or ſimilar import.

" Whatever difference of opinion may ariſe within theſe walls, ' I ſuppoſe we have all one common object in view: we all live ' under the ſame form of government, have the ſame grievances ' to complain of, and ſeek the ſame redreſs. It was juſtly obſerv- ' ed by Citizen Callander, That, ſoon after the union of the crowns ' of England and Scotland, the people of both countries were de- ' prived of ſome of their moſt valuable privileges. It was from ' that period that the greateſt encroachments began to be made ' on public liberty; but, if that union has operated to rob us of ' our rights, let it be the object of the preſent one to regain them. ' If the event exiſts for our ſhame, as it has exiſted for our chaſ- ' tiſement, let it alſo exiſt for our inſtruction.

" Some doubts have been introduced reſpecting our right to u- ' niverſal ſuffrage. I apprehend that we may juſtly claim it as ' our inheritance from nature; but we can with confidence, be- ' cauſe we can with truth, appeal to antiquity for our title to this ' right; and it will be found to have been exerciſed by our an- ' ceſtors in its fulleſt extent. It muſt be confeſſed, however, that, ' in the early periods of our hiſtory, there exiſted a body of men ' called Slaves: happily, this diſtinction does not exiſt in our days; ' and, if there are political ſlaves, it is time that they ſhould ex- ' iſt no longer.

' In eſtabliſhing the right of univerſal ſuffrage, the Convention ' may perhaps give offence to the ſattellites of deſpotiſm; but, ' while we can eſtabliſh our demand on the immutable principles ' of juſtice, we may at the ſame time prove, that it is perfectly a- ' greeable to the ſpirit of our conſtitution.

' Under the Saxon Government, the people met frequently in ' the different diviſions of the country, in aſſemblies called Folk- ' motes. There they deliberated; there every man had a voice ' in chooſing his repreſentatives; the concurrence of the people ' was neceſſary to the adminiſtration of government; and they o- ' beyed the laws which themſelves had made. The King of Eng- ' land uſed to ſit in the Folkmote; and, I believe, it would be ' more to his own advantage if he ſat there now.

' In the progreſs of time, however, great deviations have been ' made from the original purity of the conſtitution, and the nati-

' onal repreſentation has been ſuppoſed to be ſometimes influenc-
' ed by motives not altogether congenial to the happineſs of
' the people. Human nature is ſo conſtituted, that every man
' is inclined to purſue his own individual intereſt in preference
' to that of others. If you appoint a man to act as your agent,
' and make his ſituation ſuch that he has every temptation to
' betray you without incurring the danger of being called to an
' account, the probability is, that he will ſacrifice your intereſts
' to his own. It is therefore that a free ſuffrage of the people
' is what every man ought to deſire, as that alone can make the
' intereſt of the repreſentative and his conſtituent the ſame. The
' great art of government, I apprehend, is this, that all ſhould
' be governed by all; but unhappy is the country where men
' are called upon by every intereſt to act in oppoſition to their
' duty.

' Much, of late has been ſaid about meetings of mobs. I appre-
' hend that no meeting of the people can be called a mob, if their
' deliberations be directed towards the public good; but if men
' meet for an oppoſite purpoſe, for promoting the miſery or the de-
' ſtruction of the human race, though they ſhould ſit with crowns
' on their heads and ſceptres in their hands, they are truly a
' mob.

' Were all mankind to aſſemble in public meetings, one of two
' things muſt follow; either they will behave properly or impro-
' perly; if properly, their meeting will tend to good; if impro-
' perly, it carries its own cure along with it. The people will
' be ſoon brought into a better method by a ſenſe of ſelf-preſer-
' vation, by which they will correct the errors into which they
' have fallen.

' It may occur, that the voice of the people may be wrong when
' their underſtandings are perverted by prieſtcraft, or darkened by
' political ſuperſtition, like the voice once heard in Jeruſalem, of
' *crucify him! crucify him!* when that nefarious deed was perpe-
' trated, at which the ſun hid his head in darkneſs and in blood.
' But, were the tyrants of the earth as ſolicitous to enlighten as
' they are to puniſh their unfortunate ſubjects; were governments
' to inſtruct the poor, inſtead of hanging up their bodies on gib-
' bets; the voice of the people would then be the voice of God.'

' By the Norman Conqueſt, or rather Robbery, (for that tranſac-
' tion, like every other, is to be conſidered by its conſequences) the
' right of voting was greatly curtailed; but ſurely we can, with
' great propriety, meet to petition Parliament for the reſtoration of
' the right of univerſal ſuffrage; a right which is ſo neceſſary to the
' juſt adminiſtration of government; for, if any man comes and tells
' me that I muſt pay a tax to which I have never conſented, neither
' by myſelf nor my repreſentative, What am I think of the legality
' of his claim? Whenever money is taken from the people by a mi-
' litary power, or by any other authority not delegated by themſelves,

'call that government what you will, it is a government of force—it 'is the ſword which governs. The right then, of univerſal ſuffrage, 'of which we have been ſo unfortunately and unjuſtly deprived, I 'repeat, is not only a natural right, but an inherent principle of the 'conſtitution. In the early periods, every man had a vote for his 'repreſentative. With ſome little variation, the practice continued 'for ages; it underwent conſiderable alterations at the Conqueſt; 'a period at which the goodly fabric of Anglo-Saxon government 'was undermined, and the ſtructure of tyranny erected in its ſtead.

'It has been obſerved, that the Revolution of 1688 does not pro- 'duce the advantages which might have been expected from ſuch an 'event. It is true, that, at the Revolution, univerſal ſuffrage was 'not diſpenſed to the people with that liberality which it ought to 'have been; but ſtill the preſent form of government, in my opi- 'nion, no more reſembles the Revolution, than a dead putrid carcaſe 'does a living body.

'The principal advantage of the Revolution was, that it made the 'chief magiſtrate reſponſible for his truſt, by eſtabliſhing the right 'of the people to alter the line of ſucceſſion to the throne. The 'Houſe of Hanover, if they are wiſe, will not be averſe to revolu- 'tion principles; for it is in conſequence of thoſe principles that the 'preſent monarch reigns in Britain. A worthy member, I believe 'with the beſt of intentions, called another to order, and ſaid he was 'going too far:—no man, I apprehend, goes *too far*, unleſs he goes 'beyond the rule of right—unleſs he violates the truth. If the mem- 'bers who compoſe a government abuſe their truſt, May they not 'be reſiſted? And, if there exiſted a right in any preceding gene- 'ration to amend the conſtitution, Can it be ſaid that that right does 'not equally belong to the preſent?

'Let us then endeavour to inſtruct the people in their rights, and 'to inform them of our views and our intentions; they will come 'and ſign our petitions, and we ſhall be enabled to ſend them up 'ſubſcribed by a majority of the people. The voice of the people 'will be heard, whenever it is ſpoken in the language of truth, and 'by a number ſo reſpectable as to *command* attention; and it will 'ſoon have that reſpectability, if we have reaſon on our ſide.

'As to the manner in which the union is to be formed, we may 'find precedents for it in our early hiſtory; but the firſt thing to 'be done, is to enlighten the people;—endeavour to diffuſe the 'principle on which you act. When you have got a ſufficient num- 'ber in every diſtrict, eſtabliſh a correſpondence among them;— 'ſhew them the neceſſity of uniting in the common plan of co-opera- 'tion; then the people, aſſembled in the different departments of 'the country, will reſemble the ancient Folkmotes, and will ſpeak in 'language too reaſonable to be confuted, and too peremptory to be 'refuſed.

'The manner in which they ſhould organize themſelves is of very 'important conſideration; and they ought to be particularly careful

'what perſons they chuſe for delegates to the next convention: let 'them be plain men, ſuch as I ſee here;—none who have ever 'breathed the peſtilential air of a court—or bowed the knee to ari- 'ſtocracy. Let us renounce all attachment to parties, and be no 'more deceived by the pretended patriotiſm of the great. During 'the American war, reformers and patriots ſprung up like muſh- 'rooms, without any diminution of public burdens. Like muſhrooms 'they were ſhort-lived; for they ſprung from a ſoil of dung, a *hot- 'bed* of corruption. Pitt has ſucceeded to Fox, and Fox to Pitt, 'without any reform being obtained; but let us no longer put faith 'in ſuch men, unleſs they bring forward a reform founded on annu- 'al parliaments and univerſal ſuffrage:—that only is the kind of re- 'form which will ſatisfy the people, and which they will never 'ceaſe to claim as their due. Depend upon it, whenever the leaders 'of parties ſee that the people are determined upon having their 'rights, they will not only endeavour to ſwim along the ſtream, but 'will ſtrive to direct its courſe. Truſt them not—they did not come 'forward in the hour of public danger;—Why then ſhould they be 'truſted, when they ſeek your favour only for perſonal conveni- 'ence?

'The city of York has been propoſed as a proper and centrical 'place for the meeting of next convention; but I can aſſure you that 'city is the ſeat of a proud ariſtocracy, the ſeat of an archbiſhop; 'however, I would not object to going there; as the Saviour of the 'world was often found in the company of ſinners, let us go there 'for the ſame gracious purpoſe, to convert to repentance. The bor- 'ders of this country and England were mentioned by another mem- 'ber, and I ſhould rather prefer ſome place there; for we ſhould 'have this pleaſing reflection, that we meet for promoting philan- 'thropy and peace, on the ground which had often been drenched 'with the blood of our anceſtors. Let us then, fellow citizens, u- 'nite heart and hand to bury the hatchet of natural antipathy, which 'the wicked policy of courts once inſtigated us to wield. Let us 'brighten the chain of national friendſhip. Let there be no other 'with, either among Scots or Engliſh, than to obtain freedom, and 'no other rivalſhip, than who ſhall beſt deſerve it.'

FURTHER, at a meeting of the ſaid aſſociation, upon the 25th day of the ſaid month of November 1793, or on ſome one or other of the days of that month, or of the months aforeſaid, within the room or Maſon-lodge aforeſaid, Alexander Callender, one of the members, having made a motion of the following or ſimilar tenor, "That in caſe the miniſter, or any other member of either Houſe of Parliament, bring forward a motion for leave to bring in a Convention Bill, ſuch as has paſſed in Ireland, to prevent the people from meeting according to their juſt rights by the Revolution, the ſame motion ſhall be notice to the delegates to meet in convention, to aſſert their rights;" the ſaid motion was made the ſubject of diſcuſſion in the ſaid meeting, on the 27th day of the ſaid month, or on

one or other of the days of that month, or the months aforesaid, when sundry amend ments, of a wicked and seditious tendency were proposed; and the said motion, with the amendments, having been, by the said meeting, referred to some of the members thereof as a committee, to draw up a motion from the whole, Charles Sinclair, one of the members of the said committee, did, upon the 28th day of the said month of November, or on one or other of the days of that month, or of the months aforesaid, read to the said association or meeting, when assembled within the room or Mason-lodge aforesaid, the amendments upon the said motion, as agreed on by him and the committee aforesaid; when the said association or meeting did wickedly and feloniously, then and there, all the members standing on their feet, solemnly and unanimously come to a resolution of the following import or tenor:

"That this convention, considering the calamitous consequences of any act of the legislature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our own and acknowledged constitutional liberties, do hereby declare, before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any act which shall militate against the constitution of our country; and shall continue to assemble, and consider of the best means by which we can accomplish a real representation of the people, and annual election, until compelled to desist by superior force.

And we do resolve,

That the first notice given for the introduction of a Convention Bill, or any bill of a similar tendency to that passed in Ireland, in the last session of their parliament;

Or any bill for the suspension of the *Habeas Corpus Act*, or *the act for preventing* wrongous imprisonment, and against undue delays in trials in North Britain;

Or in case of an invasion;

Or the admission of any foreign troops whatsoever into Great Britain or Ireland; all, or any one, of these calamitous circumstances, shall be a signal to the different delegates to repair to such place as the Secret Committee of this convention shall appoint; and the first seven members shall have power to declare the *sittings permanent;* and twenty-one shall constitute a convention, and proceed to business.

The convention doth therefore resolve, That each delegate, immediately on his return home, do convene his constituents, and explain to them the necessity of electing a delegate, or delegates, and of establishing a fund without delay, against any of these emergencies, for his or their expence; and that they do instruct the said

delegate or delegates, to hold themſelves ready to depart at one hour's warning."

Which ſeditious reſolution the ſaid Joſeph Gerrald not only approved of, but immediately, on its being ſo agreed to and paſſed, did, on the day, and within the place aforeſaid, wickedly and feloniouſly addreſs the ſaid meeting or aſſociation, in a ſpeech of the following or ſimilar import.

"I riſe to congratulate the convention on the adoption of this reſolution, not only on the propriety of the meaſure itſelf, but on that unanimity and ſolemnity with which it has paſſed.

I have not been able to procure a copy of the iniquitous act which has excited ſuch abhorence; but I have here the heads of the bill in the ſpeech of Mr. Grattan, the man who, while he ſpoke againſt the bill, at the ſame time betrayed the liberties of his country. This bill, commonly called the Convention Bill, which paſſed in the laſt ſeſſion of the Parliament of Ireland, and which is the prototype of what may be attempted in Britain, breathes ſuch a ſpirit of cruelty and oppreſſion, that if tyranny were to be perſonified, it could not ſpeak in language more inſulting to the feelings of mankind.

By the *firſt* head the delegates of the people are not allowed to meet to petition Parliament. Surely deſpotiſm could not be more ſtrongly expreſſed even in Turkey. There every Baſhaw liſtens to the petitions of his trembling ſlaves; yet that privilege is denied to the people of Ireland. But it has been ſaid, to uſe a common expreſſion, this bill was firſt paſſed in Ireland to feel the pulſe of the people of Britain, that our rulers might know if it beat high with indignation, or if the blood run coldly in our veins; and we are willing to bow our necks to the yoke, and ſuffer in fear and in ſilence.

In the *ſecond* head, they are forbidden to meet for the purpoſe of aſking the redreſs of grievances. Good God! What is government inſtituted for, if it is not for the redreſs of grievances? I had thought that in the moſt deſpotic government the people were permitted to utter their complaints, and beg to be relieved of their ſufferings; but, at the cloſe of the 18th century, we find this laſt indulgence to ſlaves denied to a part of the Britiſh empire. Our government boaſts that it is the beſt in the world; but it is not in Ireland that we are to look for its excellencie. Whenever a government tells the people that they muſt not petition, that government is tyranny; and whatever you may be told of its acts of Parliament in favour of liberty, theſe acts of Parliament are ſet aſide; they are mere pieces of parchment, and of no more value.

The *third* head makes it a capital offence to conſider of any public concern. Now, to make a road, or build a bridge, are public concerns; and of courſe the people of Ireland cannot meet on buſi-

neſs of that nature, without making themſelves liable to the penalty of this law.

Though I could not get a copy of this bill, the heads, which I have read, are ſufficiently explanatory of its deteſtable principles; and I hope the meaſure which has paſſed this night will convince the miniſter, that we are determined to guard againſt every attempt that may be made to deprive us of our rights; and though by ſome it may be *thought a bold, by ſome a daring meaſure*, yet it will be found the beſt for ſecuring the peace of our country: for if ſuch a law were ſuffered to paſs, if men were not allowed to utter their complaints, a number of fierce and rancorous paſſions would ariſe, and we would ſeek to appeal to that laſt terrible deciſion, the event of which is uncertain, but which God and nature allows.

If the ſervility of the people had been leſs; if they had dared to meet, and, in place of murmuring, to have told their rulers that there was danger in ſeeking to deprive them of their liberties, we would not have had to adopt this reſolution to night; but when I ſaw the calm deliberate countenances of all preſent, and the ſolemn manner in which it was paſſed, I was convinced that it would not only be a reſolution of words, but a rule of action."

AND FURTHER, upon the ſaid 28th day of November, or one or other of the days of that month, or months aforeſaid, and within the room or Maſon's-lodge aforeſaid, after the foreſaid reſolution had been ſo paſſed, and the foreſaid ſpeech ſo made by the ſaid Joſeph Gerrald, a motion having been made in the ſaid meeting, in the following words, or in words of a ſimilar import and tendency: "That a Secret Committee of three and the Secretary be "appointed to determine where ſuch Convention of Emergency "ſhall meet: That ſuch place ſhall remain a ſecret with them and "with the Secretary of this Convention: And that each delegate "ſhall, at the breaking up of the preſent ſeſſion, be entruſted with "a ſealed letter, containing the name of the place of meeting: "This letter ſhall be delivered unopened to his conſtituents; the "receipt of which ſhall be acknowledged by a letter to the Secre-"tary, preſerved in the ſame ſtate, until the period ſhall arrive at "which it ſhall be deemed neceſſary for the delegates to ſet out;" the ſaid meeting did wickedly and ſeditiouſly unanimouſly approve of the ſame. AND at a ſubſequent meeting, upon the 4th day of December 1793, or one or other of the days of that month, or months aforeſaid, and within the ſaid room or maſons-lodge aforeſaid, it having been moved by Maurice Margarot one of the members of the ſaid meeting, "That the moment of any illegal diſper-"ſion of the preſent Convention, ſhall be conſidered as a ſummons "to the delegates to repair to the place of meeting, appointed for "the Convention of Emergency, by the ſecret committee; and "that the Secret Committee be inſtructed to proceed without de-"lay to fix the place of meeting;" the ſaid meeting did wickedly and ſeditiouſly, "unanimouſly reſolve the ſame, and appointed the

" Secret Committee to proceed as deſired." AND FURTHER, on Friday the 6th day of December 1793, or upon one or other of the days of that month, or of the months aforeſaid, the ſaid illegal aſſociation or meeting having again aſſembled in a room or work-ſhop belonging to, or poſſeſſed by, John Laing, wright, ſituated in Lady Lawſon's Yard, ſouth ſide of Croſcauſeway, in the pariſh of St. Cuthbert's and ſhire of Edinburgh, Harry Davidſon, Eſq. Sheriff-ſubſtitute of Edinburgh, having, in diſcharge of his duty, repaired to the ſaid room or work-ſhop, in order to diſperſe the ſaid illegal meeting, the ſaid Joſeph Gerrald, with his aſſociates, did then and there reſiſt the ſaid Sheriff-ſubſtitute, and refuſed to diſperſe without being compelled; and ſo much ſo, that after the ſaid Sheriff-ſubſtitute had entered the room, and deſired them to diſperſe, the ſaid Joſeph Gerrald wickedly and felonioufly exclaimed, " The rights of Britons are violated by this illegal interruption of " our peaceful meeting. It is force, not reaſon, with which our " enemies aſſail us. I defy them to aſſign one reaſon againſt the " lawfulneſs of our meetings; but if they thirſt after our blood, " they may now gratify themſelves; mine I ſhall ſee flow with " pleaſure, if with it flows the freedom of my country." AT LEAST, he expreſſed himſelf in language of the above import; and did afterwards take the chair as preſes of the meeting, and preſumptuouſly did continue to ſit and act, until he was, by the ſaid Sheriff-ſubſtitute pulled from the chair; which conduct of the ſaid Joſeph Gerrald was highly aggravated, from the circumſtance that the ſaid illegal aſſociation had been, the preceding day, diſperſed by the magiſtrates of Edinburgh, as being illegal; and alſo, that the ſaid Joſeph Gerrald had, the preceding day, been apprehended on a warrant of the ſaid Sheriff-ſubſtitute, and ordered to be committed to jail, for being a member of the ſaid illegal aſſociation, till liberate in due courſe of law. And the ſaid Joſeph Gerrald, when apprehended and carried before Harry Davidſon, Eſq. Sheriff-ſubſtitute of the county of Edinburgh, on the 5th of December 1793, did, in his preſence, emit and ſign a declaration. And ſundry papers having been found in the poſſeſſion of the ſaid Joſeph Gerrald when firſt apprehended and afterwards inſpected in his preſence, by authority of the Sheriff of Edinburgh, two liſts or inventories of theſe papers were made up; one of which, conſiſting of ten articles, ſubſcribed by the ſaid Joſeph Gerrald, and William Scott, Procurator-fiſcal of the county of Edinburgh; and the other, of nine articles, is ſubſcribed by the ſaid William Scott and the Sheriff-ſubſtitute. Which inventories, with the whole articles therein contained, (except No. 1. which had been returned to the ſaid Joſeph Gerrald;) as alſo, the foreſaid declaration emitted by him before the Sheriff-ſubſtitute of Edinburgh; together with copies of Nos. 78, 79, and 80, of the newſpaper called, " The " Edinburgh Gazetteer;" as alſo, the ſcroll or draught of the Minutes of the ſaid General Convention, from the 29th of Octo-

ber to the 4th of December 1793, consisting of 95 pages, and found in the custody of William Skirving, Secretary to the said Convention, when apprehended by warrant of the Sheriff of Edinburgh, in the month of December last, being No. 1. of the inventory of papers found in the possession of the said William Skirving, and made up in presence of the Sheriff of Edinburgh, upon the 5th of December last, with the said inventory itself, and the whole of the other papers and writings therein contained; as also, an inventory of sundry papers found in the custody of Charles Sinclair, one of the members of the said Convention, and made up in presence of the Sheriff of Edinburgh, upon the 7th of December 1793, consisting of twenty-one articles, with the whole of the said twenty-one articles themselves, being all to be used in evidence against the said Joseph Gerrald on his trial, will for that purpose, in due time, be lodged with the Clerk of the High Court of Justiciary, before which he is to be tried, that he may have an opportunity of seeing the same. AT LEAST, times and places above-mentioned, the said acts of sedition were committed, and the said Joseph Gerrald is guilty actor, or art and part thereof. ALL WHICH, or part thereof, being found proven by the verdict of an assize, before our Lord Justice General, Lord Justice Clerk, and Lords Commissioners of Justiciary, in a Court of Justiciary to be holden by them within the Criminal Court-house of Edinburgh, upon the seventeenth day of February instant, the said Joseph Gerrald, above complained upon, OUGHT to be punished with the pains of law, to deter others from committing the like crimes in all time coming, OUR WILL IS HEREFORE, &c.

LIST OF WITNESSES *.

1 Harry Davidson, Esq. sheriff-substitute, or late sheriff-substitute, of the county of Edinburgh.
2 William Scott, procurator-fiscal of the county of Edinburgh.
3 James Williamson, clerk to the said William Scott.
4 Archibald Welsh, also clerk to the said William Scott.
5 John Dingwall, writer in Edinburgh.
6 Joseph Mack, writer in Edinburgh.
7 James Lyon, messenger in Edinburgh.
8 John M'Donald, residenter in Edinburgh.
9 Neil M'Glashan, residenter in Edinburgh.
10 Alexander Williamson, sheriff-officer in Edin.
11 George Ross, clerk in the Gazetteer Office, Edin.
12 William Ross, clerk in the Gazetteer Office, Edin.
13 Alexander Aitcheson, student of medicine, residing in Canongate of Edin.

* *A list of the exculpatory witnesses who were cited, will be given at the end of the trial.*

14 Mitchell Young, painter in Edin.
15 John Wardlaw, writer in Edin.
16 John Laing, wright in Nicolſon's-ſtreet, Edin.
17 John Clark, maſon in Edin.
18 William Romanes, merchant, Lawnmarket, Edin.
19 Thomas Cockburn, merchant, Lawnmarket, Edin.
20 Samuel Paterſon, merchant in Edin.
21 Alexander Newton, formerly tobacconiſt in Dunſe, now reſiding in St. Patrick's-ſquare, Edin.
22 Alexander Reid, joiner and cabinet maker, reſiding in Edin.
23 John Gourlay, watchmaker in Edin.
24 Archibald Binnie, type-founder in Edin.
25 David Downie, goldſmith in Edin.
26 John Buchannan, baker in Canongate of Edin.
27 Alexander Fortune, leather merchant in Canongate of Edin.
28 John M'Intyre, teacher in College-wynd in Edin.
29 The Right Hon. Thomas Elder, lord provoſt of the city of Edin.
30 Niel M'Vickar, Eſq. one of the magiſtrates of Edin.
31 James Laing, one of the deputy city clerks of Edin.
32 John Campbell, reſidenter in Edin.
33 John Fraſer, reſidenter in Edin.
34 Benjamin Riſe, reſidenter in Edin.

LIST of ASSIZE.

James Donaldſon, bookſeller in Edinburgh.
David Ramſay, printer there.
David Deuchar, ſeal engraver there.
Peter Hill, bookſeller there.
5 Alexander Wight, baker there.
Thomas Tibbets, hatter there.
John Bell, bookſeller there.
Alexander Pitcairn, inſurance-broker there.
David Bridges, merchant there.
10 James Hunter, merchant there.
Hector Gavin, engraver there.
James Cunningham, baker there.
Andrew Milligan, watch-caſe-maker there.
Sir William Forbes, Bart banker there.
15 Alexander Spence, jeweller there.
Peter Mathie, jeweller there.
John Millar, optician there.
Alexander Gardner, jeweller there.
William Creech, bookſeller there.
20 Thomas Hutchinſon, merchant there.
Andrew Kay, glazier there.
William Cuming, ſhoemaker there.
Thomas Kennedy, glover there.

John Hutchinſon, merchant there.
James Fyfe, merchant there.
John Sibbald, ſmith there.
Alexander Niſbet, manufacturer there.
James Collier, merchant in Edinburgh.
John Little, merchant there.
Alexander Dudgeon, baker there.
William Ranken, taylor there.
Patrick Main, painter there.
Alexander Smith, baker there.
James Spence, painter there.
James Hunter, Baker there.
Alexander Wright, wine-merchant there.
James Craig, architect there.
William Murray, baker there.
Thomas Hunter, grocer there.
William Calder, merchant there.
John Sinclair, merchant there.
James Simpſon, baker there.
Thomas Malcolm, ſhoemaker there.
William Crawford, ſmith there.
Archibald Campbell, brewer there.

ROB. M'QUEEN.
ALEX. MURRAY.
DAV. RAE.

Lord Juſtice Clerk. Joſeph Gerrald, what do you ſay to this? Are you guilty, or not guilty?

Mr. Gerrald. Not guilty, my lord.

Mr. Gilles. My lords, in a caſe like the preſent, which has been pleaded by counſel of the very firſt eminence, and which has already received the ſolemn conſideration of this Court, it is a difficult taſk for any counſel, and eſpecially for a young counſel, to go over the ſame grounds again, and that too with the view of directly and ſtrongly maintaining that other views ought to have guided your lordſhips judgment formerly, and that other views ought to guide it now. Added to this, is that firmly rooted and wide ſpread notion of the guilt of all thoſe that ſtand at this bar accuſed of ſedition. The temper of men's minds, from many obvious cauſes, is ſuch, that they conſider a perſon at this bar under this accuſation, as already condemned—that it is almoſt unneceſſary to plead for *him*, except as going through the forms, while he, whoſe fortune it is to undertake ſuch a cauſe, is conſidered as an effect, a ſharer of the crimes imputed to him whom he defends, and by *doing* his duty, may incur all the conſequences that ought only to follow his not doing it.—As to the pannels, thus brought before you, the public eye conſiders them as the perſonal enemies of us all.—They do not aim, as we are taught to

think, at the ruin of this or that individual---we have not merely a remote intereſt in their deſtruction, but it is abſolutely eſſential to our own perſonal ſafety. Our properties, our lives, our all, are repreſented as the objects of their violence, and againſt danger ſo near, and danger ſo dreadful, we ſhould not be ſcrupulous about our means of defence. The ſtrongeſt feelings of our nature, thoſe of ſelf preſervation itſelf, are thus called into inſtant energy amongſt us all. It is difficult in ſuch circumſtances to judge right; and the difficulties are altogether on another ſide from what takes place commonly. In the common caſe the chief danger is of injuſtice ariſing from compaſſion and mercy. *Here* the danger is of injuſtice being done, (unwillingly done yet done effectually) from motives of fear, and of anger againſt thoſe who have cauſed that fear. In ſuch a caſe it behoves us to examine ourſelves; to be ſure of the grounds upon which we proceed to baniſh the leaſt appearance of paſſion; and to renounce a judgment, however deliberately conſidered, if an after deliberation ſhow it to be even doubtful. It is impoſſible to deliberate too much.

Knowing well that in theſe reſpects your lordſhips think exactly as I do, and encouraged by this conſideration, I ſhall go on to ſtate, as well as I can, ſuch arguments as have occurred to me in favour of the unfortunate gentleman who ſtands at your lordſhips' bar. I hope to ſhew your lordſhips that the indictment is *altogether* irrelevant, at any rate that it is irrelevant to infer *that puniſhment* which has been inflicted in the other caſes of ſedition.

The crime charged, in the major propoſition of this indictment, *is ſedition*, in vague and general terms--I know very well that by the laws of this country, explained as they are, and ought to be, by the practice of this Court, the crime in this part of the indictment may be charged in *general* terms. I know that many crimes are ſo: in the caſes of robbery and murder; for inſtance, it is not neceſſary to ſtate theſe crimes particularly, or to refer to the ſtatutes, which prohibit the commiſſion and affix the puniſhment due to theſe offences. But where the law has annexed different degrees of puniſhment, to different ſpecies or degrees of the ſame offence, then if the crime is charged in general in the major propoſition of the indictment, the *leaſt culpable ſpecies* of the offence muſt be meant, and the *leſſer puniſhment* only can be inflicted. Thus, in the caſe of theft, ſimple theft is not a capital crime, but if aggravated by houſe-breaking it is puniſhed with death. Now, if theft is charged generally without this aggravation, the arbitrary puniſhment due to the offence of ſimple theft is all that your lordſhips can award. In the ſame manner with regard to ſedition, I believe it is laid down by every writer of eminence, that there are *two ſpecies* of ſedition, *verbal*, and *real*---a *ſmaller* and *greater* offence, to which our laws have annexed two different degrees of puniſhment. The puniſhment of the firſt offence, verbal ſedition, is fixed by a ſtatute which I ſhall afterwards men-

tion particularly ; and as ſedition is charged generally in this indictment, the leſſer offence muſt be underſtood. Upon this ground alone, I truſt the puniſhment muſt be reſtricted to the leſſer ſpecies of the crime, for if it was intended to accuſe this gentleman of a greater offence, the greater offence ought to have been ſtated ; it cannot, therefore, be conſtrued into any thing more than verbal ſedition, or leaſing-making, and the leſſer degree of puniſhment can only be inflicted.

I truſt from this argument that it muſt be conſidered as verbal ſedition. It will at leaſt be admitted, that where a crime is charged in general, the *degree* and *ſpecies*, muſt be gathered from the *particulars* charged in the minor propoſition. The queſtions, therefore, now to be ſubmitted to your lordſhips' conſideration are theſe,

In the *firſt* place--Whether the facts ſtated in the minor propoſition, amount to any crime at all---whether they amount to *ſedition of any kind whatever ?*

In the next place--Whether, if they are criminal, they amount to verbal or real ſedition, and if they amount only to verbal ſedition, what is the puniſhment affixed by our law to *that* crime ?

The firſt charge in the indictment is, that " the ſaid Joſeph Gerrald, above complained upon, has preſumed to commit, and is guilty actor, or art and part, of the aforeſaid crime, in ſo far as, a number of ſeditious and evil diſpoſed perſons having illegally aſſembled at Edinburgh, during the months of October, November, and December, 1793, the ſaid Joſeph Gerrald, above complained upon, did come into this country, for the purpoſe of joining and aſſiſting theſe perſons, and became a member of their illegal and ſeditious aſſociation and meeting ; which illegal and ſeditious aſſociation and meeting, at firſt aſſembled under the deſignation of a General Convention of the Friends of the People, but thereafter, preſumptuouſly and ſeditiouſly, aſſumed the name of the Britiſh Convention of the Delegates of the People, aſſociated to obtain Univerſal Suffrage and Annual Parliaments."

My lord, the illegality and ſedition laid to the charge of the Britiſh Convention, muſt conſiſt either in the *meeting itſelf* being illegal, or it muſt conſiſt in the illegality of the *object* which they had in view—that is, the obtaining Univerſal Suffrage and Annual Parliaments, a Reform in the Repreſentation of the Commons Houſe of Parliament.

Setting aſide the object of the convention, the firſt queſtion is, whether ſuch a meeting is or is not legal ? whether it is allowed, or, whether it is puniſhable by the laws of this country ? Laying out of conſideration the object which they had in view, the queſtion affects *every one* who hears me ; for who is there amongſt us who has not been preſent at ſome convocation without legal authority ? If this is to be puniſhed as ſedition, every one preſent is liable to that puniſhment. The actions of theſe men ſo aſſembled together, (I ſhall ſpeak afterwards of their ſpeeches and reſolutions, but I ſay their

actions) were inoffenſive and orderly; they are not accuſed even of the *ſlighteſt breach of the peace*. No doubt that by the ancient ſtatutes of this country, convocations within boroughs were prohibited, but what was the nature of thoſe convocations will appear from the ſtatutes themſelves. I ſhall therefore read the Act 1593. chap. 83. "It is, ſtatute and ordained that nane of our ſoveraine ladie's lieges preſume, pretende or take upon hand to make onie privie conventiones nor aſſemblies within burgh, put on armour, cleeith themſelves with weapons, or make ſound of trumpet, or talbrone or uſe culveringes, diſplayed banners, hand feingies, or uthers inſtruments bellical quhat ſumever in onie time hereafter, without the ſpecial licence of our ſaid ſoveraine lady and her hienes' magiſtrates within the burgh quhair the ſaid tumult and uproar chaunces to be had and obtained thereto, under the paine of death." Sir Geo. Mackenzie, in his obſervation upon this act, ſays, "It ſeems that mere convocations or aſſemblies are not *per ſe* puniſhable by death, without putting on armour or diſplaying banners." Thus, in order to bring the Britiſh Convention within this enactment, its members muſt have appeared in armour, and with banners, ſurrounded with all the pride, pomp, and circumſtance of war. The appearance of their meeting was ſurely very different. Their only armour was their tongues and their pens, and a few blotted and blurred ſheets of paper the only banners which they diſplayed. It is not upon this act then that any proceeding againſt this convention can be founded. *Unarmed* convocations were not at this time prohibited by any law whatever, nor were they declared to be illegal until the acceſſion of James VI. It was the wiſh of that monarch, as your lordſhips know, to aboliſh preſbytery and to repreſs the powers of eccleſiaſtical juriſdiction veſted in the preſbyterian clergy. The diſputes which thus aroſe betwixt him and the clergy was the occaſion of a ſtatute upon this ſubject. By the act 1584, chap. 131, "It is ſtatute and ordained be our ſaid ſoveraine lord and his three eſtaites that nane of his hienes ſubjects of quhat-ſumever qualitie, eſtaite or function they be of, ſpiritual or temporal, preſume or tak upon hand to convocate, conveene or aſſemble themſelves togidder, for halding of councelles, conventions or aſſemblies, to treat, conſult and terminat in ony matter of eſtaite civile or eccleſiaſtical (except in the ordinar judgment) without his majeſties ſpecial commandement or expreſſe licence, had and obteined to that effect, under the paines ordained be the lawes and actes of Parliament againſt ſik as unlawfully convocatis the kingis lieges."

After this an act was paſſed in the ſame reign, 1606, chap. 17 by which the act of 1584 was confirmed, with an addition that I ſhall now read to your lordſhips. "That na perſon nor perſons within burgh, whatſomever rank, quality or condition they be of, preſume nor take upon hand from this forth, under whatſomever cullour or pretext, to convocate or aſſemble themſelves together at any occaſion, except they make due intimation of the lawful cauſes of their meetings to the proveſt and baillies of that burgh, and obtein their licence

thereto, and that na thing be done nor attempted by them in their faids meetings, whilk may tend to the derogation or violation of the actes of parliament, lawes and conſtitution made for the well and quyetneſs of the faids burghs. Declaring by thir preſents, the faids unlawful meetings and the perſons preſent thereat to be factious and ſeditious, and all proceedings therein to be null and of nane availl. And the faids perſons to be puniſhed in their bodies, goods and geare, with all rigour, conforme to the lawes of this realme."

Your lordſhips ſee, that by this act, all perſons are prohibited of any rank, quality, or condition, from convocating or aſſembling themſelves together, upon *any* occaſion, except they give due intimation to the provoſt and magiſtrates.

My lords, it is no doubt true, that if theſe acts are ſtill in force, they apply directly to the Britiſh Convention ; but if theſe acts are ſtill in force, they apply not merely to the Britiſh Convention, but to nine tenths of all the meetings that are held in Edinburgh. Theſe ſtatutes, if enforced, would be attended with effects at once the moſt ſerious and ludicrous. We might be conveyed from the rooms in George's Street, or George's Square, to the Tolbooth, from the Tolbooth to your lordſhip's bar, from your lordſhip's bar to the hulks at Woolwich, and, from the hulks, to Botany Bay, with a cateſtrophe very diſſimilar from the commencement.

Upon theſe ſtatutes Sir George Mackenzie ſays, " this crime of ſimple convocation is ordinarily purſued before the Council, and is ſeldom puniſhed, either by the Council or Juſtice Court, *tanquam crimen per ſe* but as the aggravating quality of a riot or other crime." My lords, this was the caſe *before* the revolution ; that it was never proſecuted but as the aggravating quality of another crime. *Since* the revolution, I believe there has been no trial whatever for this offence, I apprehend therefore that proſecutions upon theſe ſtatutes are prohibited by a paſſage in the claim of rights, which I ſhall now read to your lordſhips. In the claim of rights is the following paſſage : " That the cauſing purſue and forfeit perſons upon ſtretches of old and obſolete laws, upon frivolous and weak pretences, upon lame and defective probation, as particularly the late Earl of Arguyle, are contrary to law." My lords, if before the revolution the meeting in unarmed convocations was only puniſhed as an aggravating quality of another crime, and ſince has not been puniſhed at all, we muſt neceſſarily conclude that it falls within this enactment, in the claim of rights, *of obſolete ſtatutes*. As an aggravating quality of a crime, it may operate to prevent the mitigation, or to increaſe the ſeverity of a puniſhment ;—but though it may increaſe the *degree* of the crime, it cannot alter the *nature* of it ; it cannot convert *verbal* ſedition into *real* ſedition.

But if any thing further is neceſſary to ſhew that no man can now be tried upon theſe old ſtatutes, it will fully appear from two acts that I am now to mention. The act againſt conventicles, 1670, ch. 5. has the following preamble. " Forſameikle as the aſſembling

and convocating of his majesty's subjects, without his majesty's warrand and authority, is a most dangerous and unlawful practice, prohibited and discharged by several laws and acts of Parliament, under high and great pains. And that notwithstanding thereof divers disaffected and seditious persons, under the specious but false pretences of religion, and religious exercises, presume to make, and be present at, conventicles and unwarrantable meetings, and conventions of the subjects, which are the ordinary seminaries of separation and rebellion, tending to the prejudice of the public worship of God in the churches."

Your lordships will observe, that in this preamble, it is positively declared that conventicles fell within these old statutes made against unarmed convocations, previous to *this* statute. Those conventicles were subject to punishment, as being unarmed convocations of the people, and falling within the statute I *formerly* read to your lordship, enacted in the reign of James VI. In the reign of William and Mary, this act against religious conventicles, was expressly repealed; but, I say the repeal of *that* act is of no avail, if *these old statutes* are still in force. It is of no avail, because men who so meet in conventicles may be punished under the old statutes passed in the reign of James VI. Unless therefore this statute, which was considered at the time as a great attainment to the liberties of the country, *it* is considered as nugatory, we must understand that *all* these statutes against unarmed convocations are now obsolete. In consequence of these acts every clergyman, who is not a member of the established church of this country, might be punished for holding *unarmed* convocations. By the act passed under James VI. against such convocations, the preacher might be carried from the pulpit, and the audience from their seats, to this bar, and punished with DEATH! The act of William and Mary, therefore, is of no avail, if these old statutes against unarmed conventions are still in existence. Indeed, from the absurdity to which they would lead, it must be demonstrable to your lordships that they can be no longer put in force.

Holding, therefore, that the simple act of *meeting in convention*, as these persons are said to have done, in itself contains nothing criminal. The question that next remains to be considered is, whether criminality is attached to them on account of the *professed object* which they had in view, the obtaining universal suffrage, and annual parliaments, a reform in the representation of the Commons House of Parliament.

My lords, this is a question of politics on which I have no occasion to deliver my own opinion. All that I have now to enquire is, whether the particular charges, preferred against the pannel in this indictment, amount to the generic crime of which he is accused. The pannel is here said to have been guilty of sedition; because he associated, with a number of others, in order to obtain universal suffrage and annual parliaments. This attempt may in one sense of the word

be termed illegal--inaſmuch as it certainly had for its object an alteration of the exiſting laws of this country. But in this ſenſe of the word, the propoſal of every new law may be equally termed illegal. It muſt therefore be a different ſpecies of illegality from this that the public proſecutor annexes to this convention, when he calls it an illegal and ſeditious meeting: and yet, my lords, if there is any new law or any alteration more than another upon our preſent laws, in the propriety of which a majority, and a great one too, of every deſcription of the people of this country has concurred, it is in this one thing--of a reform in the repreſentation of parliament.

Men of all ranks and deſcriptions, from the higheſt to the loweſt, from the moſt learned, to the worſt informed, have at one period or another declared their approbation of this meaſure. As to the mode or degree in which it ſhould be attempted, different opinions have been held by different men; and this difference as to the *mode* has hitherto prevented the *object* itſelf from being attained.

Upon this point, all the eminent men who at preſent ſhine in the councils of our nation have declared their opinions, at one time or another, and almoſt all of them have acknowledged the neceſſity of a reform. Mr. Pitt, who enjoys, at preſent, the favour of the crown, and the confidence of parliament, has given his opinion, not merely in favour of reform, but decidedly in favour of that ſpecies of reform which conſiſts in introducing univerſal ſuffrage and annual parliaments. Mr. Fox has alſo declared himſelf a friend to reform, though not to the ſame length which Mr. Pitt has gone; and, on this account, the gentleman at the bar has ſpoken of this great ſtateſman in terms of conſiderable diſapprobation. In the courſe of a long political life, which might be regarded as unfortunate, if the enjoyment of true glory were not to be preferred to the poſſeſſion of power, Mr. Fox has all along declared himſelf an enemy to univerſal ſuffrage, and if I am not miſtaken, to annual parliaments. Where ſuch great men differ, it is not for us to decide; but ſurely much blame cannot be imputed to the man whoſe opinions are ſanctioned by either of ſuch authorities. It would be hard, indeed, if this gentleman were to be puniſhed, merely for having adopted the opinions of Mr. Pitt, in preference to thoſe of Mr. Fox--that the ſame ſentiments which have ſerved to place one man at the head of the nation, ſhould expoſe another to the vengeance of her laws—that they ſhould raiſe the one perſon to the height of preferment, to the pinnacle of his ambition, and plunge the other into the deepeſt abyſs of human wretchedneſs.

My lords, what I am going to read will ſhew you, that theſe ſentiments have been held by men of the firſt eminence, in point of rank, in point of (reputed, abilities) of fortune, and of power. The pamphlet, from which I read, was publiſhed under the auſpices of a ſociety which owed its formation, in a great meaſure, to the Duke of Richmond and Mr. Pitt; and of which they were long the leading members. The language does not diſgrace its authors: "Every application, therefore, for the redreſs of the preſent grievances of the

Pitt

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Richmond and Pitt. — The Child will nee

nation, that ſhall be made to a body of men, no longer under the influence of their conſtituents, but on the contrary, uniformly acting in ſubſerviency to the views and intereſts of the crown, muſt of neceſſity be unſucceſsful; and from the natural effect of diſappointment upon the human mind, will probably impair the vigour of every future exertion." In another paſſage, "that the reſtoration of the Commons Houſe of Parliament to freedom and independency, by interpoſition of the great collective body of the nation, is eſſentially neceſſary to our exiſtence as a free people." I ſhall only read one other paſſage: "An Equal Repreſentation of the people in the great Council of the Nation, *annual elections*, and the *univerſal right of ſuffrage*, appear ſo reaſonable to the natural feelings of mankind, that no ſophiſtry can elude the force of the arguments which are urged in their favour; and they are rights of ſo tranſcendent a nature, that in oppoſition to the claim of the people to their enjoyment, the longeſt period of proſcription is pleaded in vain. They were ſubſtantially enjoyed in the times of the immortal Alfred; they were cheriſhed by the wiſeſt princes of the Norman line; they form the grand palladium of our nation; they ought not to be eſteemed the grant of royal favor; nor were they at firſt extorted by violence from the hand of power. They are the birth right of Engliſhmen, their beſt inheritance, which, without the complicated crimes of treaſon to their country, and injuſtice to their poſterity, they cannot alienate or reſign. They form that triple cord of ſtrength, which alone can be relied on, to hold, in times of tempeſt, the veſſel of the ſtate."

My lord, this charge, then, of having wiſhed for univerſal ſuffrage and annual parliaments, contains nothing criminal, nothing relevant to infer any puniſhment at all; and much leſs the puniſhment that has been inflicted on the crime of ſedition. I am not now maintaining that a reform in parliament is expedient, and ſtill leſs that annual parliaments and univerſal ſuffrage ſhould be the mode of that reform. That mode may be improper—ſo Mr. Fox thinks it, in oppoſition to what Mr. Pitt thinks, or at leaſt, moſt certainly thought; and ſo your Lordſhips, in oppoſition to Mr. Pitt, may alſo think it. But, if the duration of parliaments has been different at different times, if the elective franchiſe has alſo been different at different times, and if our laws have oftentimes varied and altered both, and may in future vary and alter them again; then this is a ſubject upon which every inhabitant of the country is at liberty to form his own opinion, and take ſuch meaſures as he thinks proper for promoting thoſe changes of which he approves. In a matter of this kind, open to the deliberation of all, the only queſtion is, whether the meaſures taken are legal. If illegal meaſures are employed either to promote or oppoſe a reform, they are equally puniſhable in the one caſe as in the other. My lords, it is here ſtated, that it was criminal to propoſe this reform in the convention; and as actions, innocent in themſelves, may be made criminal by their relations and accompaniments—ſo the public proſecutor maintains that this convention gives the tinge of criminali-

ty to the propoſed reform, in itſelf perfectly blameleſs. But your lordſhips will attend to where this argument leads. It has been ſhewn, and I truſt will ſcarcely be denied, that to meet in a convention for innocent purpoſes is entirely innocent; on the other hand, it has been equally ſhewn, that it is not criminal to wiſh for annual parliaments, or univerſal ſuffrage; but, ſays the public proſecutor, it is criminal to wiſh for univerſal ſuffrage in a convention. This is ſtrange arguing—it is innocent to meet in a convention; it is innocent to wiſh for univerſal ſuffrage and annual parliaments; but it is criminal to meet in a convention, and *there* to wiſh for univerſal ſuffrage and annual parliaments. So that theſe two actions, perfectly innocent in themſelves, when joined together form a crime. It is a common ſaying, that two blacks cannot make a white; but it ſeems the converſe holds good, that two whites may make a black. It appears that theſe men have wiſhed for univerſal ſuffrage and annual parliaments, and that they have wiſhed for it in a convention; but if it be lawful to meet in a convention, without expreſſing ſuch a wiſh, and if the wiſh itſelf be innocent, it is totally impoſſible that theſe two acts, in themſelves innocent, can form a crime. As in arithmetick, a thouſand cyphers will not make a ſingle unit, ſo in morals, and in law, a thouſand innocent actions can never conſtitute one crime. I apprehend, therefore, that I have ſhewn that the great and general charge in this indictment, of having become a member of this aſſociation, for the purpoſe of obtaining univerſal ſuffrage and annual parliaments, contains in it nothing illegal whatever.

It now remains to enquire, whether the reſolutions, ſaid to have been adopted, and the ſpeeches, ſaid to have been made by the gentleman at your lordſhips bar, contain in themſelves any thing criminal; whether they ſhew that he had any intention contrary to, or different from the profeſſed objects of the convention, of which he was a member, that profeſſed object being innocent.

The indictment goes on to ſtate, that "in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonſtrate, that their purpoſes were of the moſt dangerous and deſtructive tendency, hoſtile to the peace and happineſs, and tending to ſubvert the conſtitution of this realm; imitating, in the form and tenor of their proceedings, the Convention of France, the public and avowed enemies of this country; and with whom Great Britain then was, and ſtill is, at war. The members calling each other, at their meetings, by the name of citizen, dividing themſelves into ſections, receiving reports from ſaid ſections, ſome of which bear date, Liberty Court, Liberty Stairs, Liberty Hall, firſt year of the Britiſh Convention, one and indiviſible; and ſome of which have *Vive la Convention* prefixed, and end with *Ca ira*; inſtituting primary ſocieties, provincial aſſemblies, and departments," and ſo forth. My lord, as to the words Liberty Court, and Liberty Hall, they ſurely contain nothing criminal. Liberty, both the word and the thing, has been long known, and I hope long

will be so in this country; there is nothing French in it. As to the French phrases, I admit that they are very foolish; I cannot conceive that a person of the abilities of this gentleman could have made use of them; and I believe it will be proved (if this cause goes to proof) that he had no concern in them. When the old despotism subsisted in France, French phrases were frequently used; but nobody ever supposed that they who have adopted this foolish phraseology had any intention of introducing French despotism into this country. Folly and guilt are very different things. The use of such phrases may expose one to deserve ridicule, but not to punishment.

But where would have been the crime, even if the resolutions of this convention had been written in French altogether? However much we may abhor French principles, we are not now making war upon the French language; such contest would resemble the wars of the Greeks and Trojans; not those recorded by Homer, and which have immortalised the plains of Ilium; but those battles of a later date, commemorated by our own countryman, the Spectator, and which were fought with less bloodshed in the gardens of Oxford. When it was first attempted to introduce the study of Greek into that university, the attempt, as your lordships know, was violently opposed. *Græcum est, non potest legi* was then the sentence of condemnation pronounced upon a book, and the signal of hostility against all who presumed to read it. The Trojans, however, were defeated; the study of Greek was introduced, and has flourished at Oxford, and no SEDITION has followed it.

My lords, the indictment has been read, and therefore I will not go at length into it. Here is a long speech, said to have been uttered by the gentleman at the bar, which contains a great deal of matter, tending, no doubt, to make all these persons wish for annual parliaments and universal suffrage. The conclusion of this speech winds up the whole matter. "Let us then endeavour to instruct the people in our rights, and to inform them of our views and our intentions; they will come and sign our petitions, and we shall be enabled to send them up subscribed by a majority of the people. The voice of the people will be heard wherever it is spoken in the language of truth, and by a number so respectable as to *command* attention; and it will soon have that respectability, if we have reason on our side." I see that the word *command* is here put in italics, as if it implied or suggested the least idea that violence or force was intended. The word must be explained by its correlative, the substantive which it governs, attention. It cannot imply that he was to make use of *force* to gain attention, but to seek for numbers, as convinced of the truth and utility of what he proposed; and if numbers and truth cannot procure attention, what can? The tenor of this paragraph, as I have said, sums up the import of his whole speech, and shews that nothing like force was intended. It expressly states "let us then endeavour to instruct the people in their rights, and to inform them

of *our* views and *our* intentions; they will come and ſign *our* PETITIONS." It is not in the form of *petition* that thoſe perſons appear who mean to uſe violence: it is impoſſible, therefore, that a word uſed figuratively can imply that violence was meant, or could poſſibly be intended.

But if I am rightly informed, conſiderable ſtreſs has been laid in former trials upon this reſolution, ſaid to have been comé to by the convention. The indictment ſtates, that "the ſaid aſſociation, or meeting, did wickedly and feloniouſly, then and there, all the members ſtanding on their feet, ſolemnly and unanimouſly come to a reſolution of the following import or tenor, That this convention, conſidering the calamitous conſequences of any act of the legiſlature may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themſelves, or by delegation, to diſcuſs any matter relative to their common intereſt, whether of a public or private nature, and holding the ſame to be totally inconſiſtent with the firſt principles and ſafety of ſociety, and alſo ſubverſive of our known and acknowledged conſtitutional liberties, do hereby declare, before God and the world, that we ſhall follow the wholeſome example of former times by paying no regard to any act which ſhall militate againſt the conſtitution of our country; and ſhall continue to aſſemble, and conſider of the beſt means by which we can accompliſh a real repreſentation of the people, and annual election, until compelled to deſiſt by ſuperior force." Now what is contained in this reſolution? It contains a declaration that they will not yield obedience to an act which has never yet even been *propoſed* in our parliament; and which, I truſt, the ſituation of this country will never be ſuch as to render neceſſary. What they ſay is this, they will not yield obedience to an act if it ſhould paſs, not to an act of parliament in exiſtence, but an act which exiſts in *potentia* only, which is no more law than the moſt extravagant propoſition that can be conceived. If this is criminal, it is a crime of a moſt anomalous and extraordinary nature. They would not yield obedience to that which, perhaps, never might be a law; this, I ſay, is a crime of ſuch an anomalous and non-deſcript nature, that I know not under what term, or what degree of puniſhment it can fall. But at any rate, certainly the crime of ſaying that I will not yield obedience to an act, *if it ſhould paſs*, cannot be equivalent to diſobeying an act *after it has paſſed*. Now to what conſequences may this lead? I ſhall ſuppoſe that an act had paſſed prohibiting conventions; that it had ſaid that no convention was to aſſemble, to deliberate upon any public ſubject; and that any perſons who might afterwards meet, ſhould be liable to a fine of 20l. and impriſonment for a month. After this law a convention meets, in oppoſition to the act; they are accordingly diſperſed, and the perſons guilty are puniſhed according to the penalty ſtated in the act; but theſe men who have not diſobeyed any act, they having only reſolved to diſobey ſuch an act if it ſhould be paſſed, are to be puniſhed with fourteen years tranſportation to Botany Bay! Such are the conſequences that

may follow; the members of this convention are to undergo a puniſhment beyond all ordinary bounds, for only having declared their intention to diſobey an act, not in exiſtence; while thoſe, who in fact ſhould diſobey it, might be liable only in a trifling penalty.

My lords, I ſay again, that it is impoſſible that any violence could have been here intended, becauſe if they were to diſobey *this* ſuppoſed act, how were they to diſobey it? They muſt have met in an *unarmed* and *peaceable* convention; for it is by *ſo meeting alone*, that they could act in diſobedience of ſuch a ſtatute. If they had aſſembled, or if they or any other perſons ſhould be bold enough to aſſemble now, in an *armed* convention, they would not diſobey a ſtatute ſimilar to that paſſed in Ireland; they could only diſobey *that* by meeting in a peaceable, quiet, and orderly manner, to deliberate on public affairs. But if they had met violently and armed, it would have been in oppoſition to ſtatutes that have long exiſted in this country; and of which the enactments are fully competent to repreſs all ſuch illegal violence.

My lords, this is taking the reſolution in its very *worſt* ſenſe; but take this, which may be conſidered as the preamble of the reſolutions, and let it be explained by the reſolutions which follow: the firſt reſolution here is, "that the firſt notice given for the introduction of a convention-bill, or any bill of a ſimilar tendency to that paſſed in Ireland, in the laſt ſeſſion of their parliament, or any bill for the ſuſpenſion of the *Habeas Corpus* Act, or the act for preventing wrongous impriſonment, and againſt undue delays in trials in North Britain, or in caſe of an invaſion, or the admiſſion of any foreign troops whatever into Great Britain or Ireland; all, or any one of theſe *calamitous* circumſtances ſhall be a ſignal to the different delegates, to repair to ſuch place as the ſecret committee of this convention ſhall appoint."

Now, your lordſhips will obſerve, when, and on what occaſion they were to meet—they were to meet, not *after* the ſtatute had paſſed, but *when* a bill was introduced for paſſing it—what could be the object of ſuch meeting? It muſt be to prevent it paſſing into a law, and to remonſtrate, as they had a right to do, againſt the paſſing of it. They meant to petition parliament, ſupported by ſuch numbers, undoubtedly, as they could procure, to prevent ſuch a bill from becoming the law of the land. The object of their meeting, therefore, was to uſe their beſt endeavours, in a conſtitutional manner, to prevent this bill from being paſſed into a law; and this reſolution clearly proves that they meant to meet when the bill was brought in, not for the purpoſe of diſobeying an act, but to prevent it, by all lawful means, from being made an act binding the ſubjects of this country to obedience. They were to meet upon the introduction of a convention-bill, or of a bill for the ſuſpenſion of the *Habeas Corpus* Act, or of the act for preventing wrongous impriſonment; that is, they were to meet in order to remonſtrate, in a conſtitutional manner,

with parliament againſt the repeal of thoſe ſalutary ſtatutes which guard the rights and liberties of us all. Again, in caſe of an invaſion, the folly of the reſolution is alſo ſtated in the indictment as criminal, that "the firſt *ſeven* members ſhall have power to declare the ſittings permanent, and *twenty-one* ſhall conſtitute a convention, and proceed to buſineſs." Inſtead of any thing criminal here, all is innocence. If twenty-one were to conſtitute a convention, they could not ſurely be an armed force to aſſiſt the invaders, they could with difficulty even have repelled them. There is alſo ſtated in this indictment, a ſecond ſpeech, ſaid to be made by the gentleman at the bar, of which I ſhall read the concluſion. It is printed in Italic, and therefore, I preſume the public proſecutor meant to lay particular ſtreſs upon it. "If the ſervility of the people had been leſs, if they had dared to meet, and in place of murmuring, to have told their rulers that there was danger in ſeeking to deprive them of their liberties, we would not have had to adopt this reſolution to-night, but when I ſaw the calm deliberate countenances of all preſent, and the ſolemn manner in which it was paſſed, I was convinced that it would not only be a reſolution of words but a rule of action." Now, what is a reſolution but a rule of action? My lord, *every* reſolution is, or ought to be, a rule of action, and is intended to be ſuch when it is formed: this, therefore, is a very proper expreſſion to enforce and explain more fully the deliberate nature of the reſolution entered into, to meet and endeavour to oppoſe ſuch a bill from paſſing into a law, a bill to prevent peaceable and unarmed conventions from meeting in this country.

The indictment goes on to ſtate, that the ſaid meeting came to a reſolution, "That a ſecret committee of three and the ſecretary be appointed to determine the place where ſuch convention of emergency ſhall meet. That ſuch place ſhall remain a ſecret with them, and with the ſecretary of this convention, and that each delegate ſhall, at the breaking up of the preſent ſeſſion, be entruſted with a ſealed letter, containing the name of the place of meeting. This letter ſhall be delivered unopened to his conſtituents, the receipt of which ſhall be acknowledged by a letter to the ſecretary, preſerved in the ſame ſtate, until the period ſhall arrive at which it ſhall be deemed neceſſary for the delegate to ſet out." Here is much ſecrecy, but nothing elſe. And ſecrecy was neceſſary if peaceable conventions were to be prohibited. But an armed force cannot meet in ſecrecy, unleſs we are to ſuppoſe that the members of this convention were to aſſemble like the troops of Mr. Bayes in diſguiſe. The ſecrecy which they here obſerve is the ſureſt proof of their innocence and peaceable intentions.

My lord, in going through the whole of this indictment, I can perceive nothing relevant in it to infer the crime of ſedition, or any other crime. The meeting itſelf was innocent, the object they had in view was innocent, and the ſpeeches and reſolutions ſaid to have been made are alſo innocent; inſomuch as they were merely

calculated to promote the avowed object of the convention. They wiſhed for the ſupport of numbers; but for what? To petition parliament. They were anxious that a bill ſhould not be brought into parliament to prevent peaceable aſſemblies from meeting; and therefore they ſay they will prevent ſuch bill, as far as they can, from paſſing into a law. This alſo was neceſſary for the attainment of their object. All that can be ſaid againſt them, therefore, amounts to this, that they took the beſt meaſures they could for accompliſhing their purpoſe of obtaining a parliamentary reform; a purpoſe legal in itſelf, and which, on all hands, is admitted to be, in a certain degree, neceſſary.

At all events, I humbly apprehend, that the facts ſtated in this indictment can only amount to verbal ſedition—that there has been in this caſe, no commotion, no riſing of the people, and that ſpeeches uttered, or reſolutions formed, can only amount to verbal ſedition, or leaſing-making.

In order to ſhew this, I muſt trouble your lordſhips with reading the definitions given of ſedition by our law-writers, comparing them with the charges ſet forth in the indictment, and alſo with the ſtatutes reſpecting verbal ſedition.

The firſt is Sir George Mackenzie, book 1, title 7, who ſays, "Sedition is a commotion of the people, without authority; and if it be ſuch as tends to the diſturbing of the government, *ad exitium principis vel ſenatorum ejus & mutationem reipublicæ*, it is treaſon; but if it only be raiſed upon any private account, it is not properly called treaſon, but it is, with us, called a convocation of the lieges."

Sedition, therefore, is a commotion of the people, or a riſing of the people, without authority, according to the definition given of it by this great lawyer.

A ſimilar definition is given by Forbes, book 3, title 2, ſect. 1, "Sedition is a *commotion* or *riſing* of the people without authority, in order to do any thing tending to a diſturbance of the public peace, though the deſign be not executed, which is raiſed upon a public or private account."

According to Erſkine, the crime conſiſts in raiſing commotions or diſturbances in the ſtate.

I believe a definition more full and more accurate is given of this crime by Dr. Boyd, in his Juſtice of Peace, in book 1, title 5, "Sedition is *any commotion* or *riſing* of the people, without lawful authority, and which tends to the diſturbance of the public peace of the kingdom."

My lord, every one of theſe definitions repreſent ſedition, not as conſiſting in peaceable convocations, or in the ſpeeches and reſolutions of ſuch convocations, but as conſiſting in commotions or riſings of the people.

Accordingly there is a moſt material diſtinction to be made between *commotions and riſings* and *ſpeeches and reſolutions* tending to

excite commotions and risings. These speeches are *termed* seditious, but the expression is figurative: they are seditious merely on account of their *tendency* to excite commotions and risings of the people, which is really sedition; and this distinction is expressly pointed out by several of our statutes.

A man who makes speeches and resolutions, the tendency of which is to excite commotions, is guilty of verbal sedition, but is not guilty of that crime which he has failed to commit; he is not guilty of those commotions which his seditious speeches tended ineffectually to produce. If a person excites another to murder, and the deed is not perpetrated, he is not an accessary to the murder; he may be punished undoubtedly by the laws of this country, but he is not guilty of that murder which he instigated, but which he instigated in vain. In the same manner, these people may be guilty of having endeavoured to excite disturbances, but they cannot be punished as guilty of those commotions which have not existed. This important distinction is fully recognized in several of our acts of parliament. In the acts 1555, chap. 60, in the reign of Queen Mary:

'For-sa-meikle as diverse seditious persones hes, in times by-'past, raised amaungst the commoun people, murmures and sclan-'ders, speaking against the queenis grace, and sawing evil brute 'anent the maist Christian King of France, his subjectes sent in 'this realme for the commoun weill, and suppressing of the auld 'enemies foorth of the samin, *tending* throw raising of sik rumours 'to steir the heartes of the subjectes to hatrent against the prince, 'and sedition betuixt the lieges of this realme and the maist 'Christian kingis lieges foresaidis: and, for eschewing of sik in-'convenientes as micht follow thereupon: it is devised, statute 'and ordained, that gif onie persones in times cumming, bee hearde 'speakand sik unreasonable commoning, *quhair-throw* the peo-'ple may take occasion of sik prievie conspiracie against the 'prince, or sedition against the maist Christian kingis subjectes 'foresaidis, the samin, being proven, sall bee punished according 'to the qualitie of the faulte, in their bodies and gudes, at the 'queenis grace pleasure: And, in case the hearer thereof re-'port not the samin unto the queenis grace or her officiares, 'to the effect that the samin may bee punished, as accordis, that 'he sall incurre the saidis paines, quhilkis the principal speak-'er or raiser of sik murmures deservis.' In no less than two places this is pointed out, 'tending throw raising sik murmures,' to excite sedition, and again, 'quhair-throw the people may take 'occasion of sik prievie conspiracie.'

Lord Justice Clerk. What is the punishment?

Mr. Gillies. In their bodies and goods at the queen's grace pleasure. The next is the act 1584, chap. 134; this act points out still more clearly the distinction I just now stated:

'For-sa-meikle as it is understand to our soveraine lord and

'his three eſtates, aſſembled in this preſent parliament quhat 'great harme and inconveniente hes fallen in this realme, chiefly 'ſen the beginning of the civile troubles occurred in the time 'of his heines minoritie, throw the wicked and licentious *pub-* 'lick and private ſpeaches, and untrew calumnies of divers his 'ſubjectes, to the diſdaine, contempt and reproch of his majeſty, 'his councel and proceedings, and to the diſhonor and prejudice 'of his heines, his parents, progenitours and eſtate; *ſteirring up* 'his heines ſubjectes theirby to miſliking, ſedition, unquietnes, 'and to caſt off their dew obedience to his majeſtie to their evi- 'dent perrel, tinſel, and deſtruction, his heines continuing al- 'waies in love and clemencie, toward all his gude ſubjectes, 'and maiſt willing to ſeek the ſafetie and preſervation of them 'all, quhilkis wilfully needles, and upon plaine malice, after 'his heines mercy and pardon, oft times afoir granted hes pro- 'cured themſelves be their treaſonable deeds to be cut off as 'corrupt members of this common weill: Therefore, it is ſta- 'tute and ordained bee our ſovereign lord, and his three eſtaites, 'in this preſent parliament, that nane of his ſubjectes (of quhat- 'ſumever function, degree, or qualitie, in time cumming) ſall 'preſume, or take upon hand *privatly* or *publickly*, in *ſer-* 'mones, *declamationes*, or *familiar conferences*, to utter ony falſe, 'ſlanderous, or untrew ſpeeches, to the diſdaine, reproche, and 'contempt of his majeſtie, his councel, and proceedings, or to 'the diſhonor, hurt, or prejudice of his heines, his parents, and 'progenitours, or to meddle in the affaires of his heines and his 'eſtate preſent, by-gane and in time cumming, under the peines 'conteined in the actes of parliament, againſt makers and tellers 'of leeſinges: Certifieing them that ſall be tried contraveners 'theirof, or that hearis ſik ſlanderous ſpeaches, and reportes not 'the ſame with diligence, the ſaid paine ſall be executed againſt 'them with all rigour, in exemple of utheris.'

In conſequence of the union of the two crowns, in the reign of James VI. another act paſſed, to prevent national differences between the Scotch and Engliſh, from being excited by ſpeeches and harangue, 1609, chap. 9. The preamble of the act ſhows that it was hiſtorically ſuch as I have ſtated to your lordſhip. 'For remeed and preventing whereof, his majeſtie remembring 'how ſtrait and ſever puniſhment, hes by the laws and actes of 'his maiſt royall progenitors, kings of this realme heretofore, 'bene ordered to be inflicted upon ſik as ſhould deviſe or utter 'falſe and ſlanderous ſpeeches and writtes, to make diſſentions 'between the prince and his ſubjects, or raiſe ſedition in the 'realme, and conſidering that all ſik purpoſes and writtes, as may 'breed diſſyking betwene the inhabitants of the ſaid kingdomes 'of Scotland and England, being now all become his majeſties liege 'people, equallie ſubject and equallie beloved of heighnes, *tends* 'to maiſt dangerous diſſention and ſedition amangs his ſubjects;

' therefore, his majeſtie, with advyce and conſent of the haill e-
' ſtaites of this parliament, ſtatutes and ordeines, that whatſoever
' ſhall hereafter, by word or write, deviſe, utter, or publiſh, any
' falſe, ſlanderous, or reprochful ſpeeches or writtes, of the eſtate,
' people, or countrie of England or of any counſeller thereof, tend-
' ing to the remembrance of the auncient grudge borne in tyme of
' by-paſt troubles (the occaſion whereof is now happilie aboliſhed
' by the bleſſed conjunction of the ſaids kingdomes, under his ma-
' jeſties ſoveraignitie and obedience) or to the hinderance of the
' wiſhed accompliſhment of the perfect union of the ſaids king-
' domes, or to the ſlander or reproch of the eſtate, people, or coun-
' trie of England, or diſhonor, or prejudice of any counſeller of
' the ſaid kingdome whereby hatred may be foſtred and entertain-
' ed, or miſlyking raiſed betwene his majeſties faithful ſubjects of
' this iſle. The authors of ſik ſeditious, ſlanderous, and injurious
' ſpeeches or writtes, or diſperſers thereof, after tryell taken of
' their offence, either before his majeſties juſtice, or the lords of his
' hienes privie counſel, ſhall be ſeverelie puniſhed in their perſones
' and gudes, by impriſonment, baniſhment, fyning or mair rigo-
' rous corporall paine."

Theſe are the ſtatures that point out, as I ſaid before, and fully recognize the evident diſtinction that exiſts between commotions and riſings of the people, and ſpeeches or writings, tending to excite thoſe commotions. Your lordſhips will alſo obſerve, that the crime ſtated in the act 1606 conſiſts in endeavouring to excite diſturbances, by *ſermons*, *declamations*, or *familiar conferences*. Now, the declamations here mentioned, as diſtinct from ſermons, upon the one hand, or familiar conferences on the other, muſt be preciſely the ſame as the ſpeech ſaid to have been made by this gentleman, or the reſolutions of the other members of the convention. It cannot be ſuppoſed that perſons would declaim in the fields where there were none to hear them. Their declamations muſt have been addreſſed to an aſſembly of the people, met together, like this convention, in a room; or which would have been ſtill more criminal, and of ſtill more dangerous tendency, they muſt have been addreſſed to any accidental aſſemblage of people upon the public ſtreets.

But it is charged againſt this convention, that their object, though *profeſſed* to be a reform in the repreſentation of the Commons Houſe of Parliament, was *really* to overturn the government, and ſubvert the conſtitution of this country; and, it has been ſaid, that the *tendency* of theſe ſpeeches, joined to the *intention* with which they were uttered, converts this crime from verbal, into real ſedition; that this circumſtance takes it out of the caſe of leaſing-making, where ſpeeches are uttered, not with the evil intention that is aſcribed to theſe perſons, of ſubverting the conſtitution of the country, and changes it into real ſedition, a crime of a different nature, and of a blacker dye.

My lords, if thoſe perſons formed a plan, and entered into a reſolution, of overturning this conſtitution, and if that reſolution is indicated by their actions, they are not guilty of *ſedition*, but of *high treaſon*; and for *that* crime let them be indicted. I ſay again, if they formed this intention to overturn the government of this country, and if this intention appears from their proceedings, they ought not to have been tried on an indictment ſuch as this, but on a charge of high treaſon itſelf; a crime for which no puniſhment your lordſhips can here inflict is at all adequate. In the proceedings of the convention itſelf there is no proof of any ſuch deſign. If ſuch an intention was proved from their proceedings, the crime would be treaſon. The conſequences are obvious. If the intention is not proved, the public proſecutor is not intitled to *preſume* it, and arguing upon that preſumption, to accuſe this gentleman of a greater crime than what ariſes from his ſpeeches, according to their plain and direct meaning. The intention of ſubverting the government is not here indicated in the way that the laws of treaſon require; that is, there is no ſufficient proof of it, not even a veſtige of evidence that could enable the public proſecutor to bring my client to trial for high treaſon. Did there exiſt any ſuch proof, then the public proſecutor has neglected his duty, in not bringing an indictment for this crime. He cannot be permitted to ſay, that the proof of high treaſon being *defective*, he was obliged to charge for another offence, which very offence was to be aggravated by the treaſonable intention he could not prove: the *want* of proof of one crime is *not* the proof of another crime. This would be to overturn all judicial procedure, to ſubvert every notion of juriſprudence. The members of this convention have formed that intention which is aſcribed to them, of overturning the government of this country, or they have not. Their having formed it, is proved, or it is not proved. If it is proved, they are guilty of high treaſon. If it is not proved, this criminal intention muſt be laid out of conſideration altogether, and cannot be permitted to aggravate the degree, much leſs to alter the nature of the offence charged in the indictment. The deficiency of proof of one crime can never give riſe to a new, or a different crime; if I am accuſed of murder, and if evidence of the fact, that I committed the homicide is wanting, will that ever conſtitute a charge of manſlaughter? I ſay that the deficient proof of a greater crime can never conſtitute a leſſer crime—let the leſſer crime be charged and puniſhed as ſuch, or let the greater crime be charged and puniſhed as ſuch. If it was the intention of the members of this convention to overturn the government of this country, they are guilty of treaſon.—If it was not their intention it ought not to be charged; and they are guilty of no crime at all.

Whether this gentleman at the bar has ever formed ſuch intention is known to his own breaſt. Whether he has ever formed

ſuch intention is ever known to that Being, and to that Being alone, who can ſearch the hearts of men, and without aid of external circumſtances, pronounce upon the ſecret motives of their conduct. But no human judge can aſſume this prerogative,---can preſume guilt from conſtructions put upon ſpeeches; conſtructions which may be different by different perſons, and at different times; no man can lay his hand upon his heart, and upon conſtructions of this ſort ſay, that this gentleman has formed any ſuch intention. Even, whatever may be his own opinion, he is not entitled to act, upon that opinion here; as no legal proof of any ſort has been brought, and no conſtructive proof of treaſon is known to our laws. I am ſpeaking here as if the ſtrange and illegal practices could be permitted, of bringing forward a higher crime, not to be puniſhed itſelf, but as the aggravation of an inferior offence. Even in ſuch preposterous proceedings, could this practice be countenanced for a moment, there is, in the preſent caſe, no evidence on which ſuch aggravation could be placed.

My lords, the whole actions and proceedings of this convention may fairly, and with probability, and ſo far as it ſtrikes my mind, can only be aſcribed to their wiſhes to attain the propoſed object which they had in view, a reform in the Houſe of Commons, by the introduction of univerſal ſuffrage and annual parliaments. They *may* alſo have proceeded from the treaſonable intention aſcribed to them. But where theſe matters are doubtful, where the writings and reſolutions of men may be aſcribed either to bad or good motives, humanity and juſtice both require that they ſhould be aſcribed to motives that are good. When theſe reſolutions expreſs an avowed purpoſe, and when theſe men declare, in all their ſpeeches and motions, that they wiſhed not to ſubvert, but to reform the conſtitution, will you ſay from thoſe very ſpeeches and reſolutions, that this was not their purpoſe? Are you, from ſpeeches containing declarations that they wiſhed for reform, to conclude that they did not wiſh for reform? Are you from ſpeeches containing declarations that they wiſhed to ſupport the conſtitution, to conclude that they wiſhed to ſubvert it? This is ſtraining conſtructive evidence to a great length indeed. Thoſe are queſtions upon which men, in their cloſets, and in private life, may entertain different opinions; but your lordſhips know, much better than I do, what the ſtrictneſs of judicial evidence requires. We cannot receive in evidence thoſe things which in private life may convince us of the truth or probability of any fact. I ſay now, therefore, as I ſaid before, that could the proof of ſuch intention be admitted, as aggravating the leſſer offence charged, ſtill there is no proof of the aggravation.

My lord, it may be ſtated that the circumſtances of the times in another country, may afford a proof of the intentions of theſe men. Upon this it does not become me to ſpeak in this place; but, with regard to the French Revolution, I ſhall only ſay, that two views

may be taken of it in as far as it reſpects England---Thoſe ſcenes of bloodſhed that have been exhibited there, may ſhew us the danger of innovation on the one hand; but the very ſame circumſtances may ſhew us, on the other hand, the propriety of adopting a timely and moderate reform. A delay of reformation, may, as many think, have produced thoſe tranſactions which we all in common deplore. Some men may be impreſſed with this event, ſo as to ſtifle all deſire of reformation. To others, with equally virtuous views, it may appear that this very revolution is an additional argument for obtaining a moderate and timely reform in the repreſentation----Here again the caſe comes to be the ſame as before. Who is entitled to ſearch into this man's breaſt? He, perhaps, can lay his hand upon his boſom and ſay, that he viewed the French Revolution, as holding out to us a warning not to be too dilatory in obtaining a moderate reform, before the people are ſtirred up to thoſe exceſſes which have been committed in France.

The circumſtances of the times then which are brought forward to aggravate the offences of theſe men, may in their own breaſts form their juſtification; becauſe they may conſider the French Revolution as evincing the neceſſity and propriety of adopting a moderate and timely reform. Here then I apprehend that no ſtreſs can be laid upon circumſtances which operate in two ways; which in one view, may operate to criminate this gentleman, and in another view, may be the very proofs of his innocence and virtue.

My lord, ſetting aſide this intention of overturning the conſtitution, no veſtige of a crime remains. Even with this intention, ſince there has been no commotion, no riſing of the people, and ſince *words* ſpoken, whatever may be their purport, can never conſtitute *real* ſedition, ſtill the only offence is verbal ſedition. This has not been a frequent crime; but it is a crime not altogether unknown to our laws. In the records of this Court there are *two* inſtances of trials for leaſing-making or verbal ſedition, upon a ſtatute which I ſhall hereafter have occaſion to notice; the act 1703. The offences which were in thoſe caſes charged againſt the pannels, I apprehend to have been at leaſt as criminal as thoſe which are laid to the charge of this gentleman.

On February 1ſt, 1715, John Gratham and others were indicted for leaſing-making and ſlanderous ſpeeches, tending to excite ſedition, and alienate the affections of his majeſty's ſubjects from his perſon and government, by ſetting up the falſe pretenſions of another. The *corpus delicti* was drinking the pretender's health at the Tron Church, by the name of James VIII. and his happy reſtoration. This was a crime which was then thought to amount to leaſing-making, and accordingly it was tried upon that ſtatute.

Upon the 27th June, in the ſame year, John Oliphant, Alexander Wilſon, William Ramſey, bailies of Dundee, William Lyon, of Ogle, treaſurer, and J. Watſon, vintner, were indicted upon the

ſame ſtatute, and the ſame offence of leaſing-making, inaſmuch as for abetting the pretender's right, they did go upon the 10th of June, (the pretender's birth-day) to the croſs of Dundee, and, in a ſolemn manner, drank his health, by the title of King James, VIII. king of thoſe realms; and on the 20th, of June 1715, a thankſgiving appointed by parliament for the king's acceſſion, when the bells were ringing, they went up and prevented their ringing, and curſed the king.

I ſhall leave it to your lordſhip to decide, whether the crimes of which theſe men were convicted be not far more atrocious than the offences charged againſt this gentleman; and at a time too when rebellion raged in this country:--at that very time they were thought to amount to leaſing-making or verbal ſedition only.

My lord, I now come to enquire as to the puniſhment to be inflicted. Puniſhments upon the old acts are prohibited by a paſſage in the Claim of Rights, which I formerly read, and ſhall now read again to your lordſhips. Having particularly in their view this proviſion in the Bill of Rights, the Legiſlature paſſed the act 1703 chap. 4. (*Reads.*) "Our ſoveraine ladie conſidering that by the acts of parliament following," reciting a number of acts, "the crimes therein mentioned are made capital, and puniſhable by death and confiſcation, and that the ſaids laws have been liable to ſtreatches, and that in reſpect of their generality, and the various conſtruction which the ſame may admit, they may be, as to the foreſaid capital puniſhment, of dangerous conſequence, *Doth therefore*, with advice and conſent of the Eſtates of Parliament, abrogate and diſcharge, in all time coming, the foreſaid ſanction and pain of death and confiſcation, contained in the ſaid acts; and *ſtatutes and ordains*, that the puniſhment of the crimes mentioned ſhall, for hereafter, only be arbitrary, according to the demerit of the tranſgreſſion; that is, by fining, impriſonment, or baniſhment; or if the party offender be poor, and not able to pay a fine, then to be puniſhed in his body (life and limb always preſerved.")

My lord, one of the acts repealed by this ſtatute is the act of 1584, chap. 134, where the offence was, as I formerly ſtated, directly the ſame as that charged here, that is, declaiming in public againſt the government of the country. I need not again repeat that declamations cannot be uttered in a deſert, where nobody can hear them, or in a private room, to a private company: they muſt be addreſſed either to ſuch an aſſembly as this convention, or to the world at large, in the ſtreets, which would have been ſtill more dangerous; and therefore, this act being one of thoſe repealed by the ſtatute of 1703, the puniſhment of this laſt ſtatute can only be inflicted upon the crime.

The queſtion comes then to be what is the puniſhment enacted by this ſtatute, under the word baniſhment. With regard to *tranſportation*, your lordſhips know this was a puniſhment altogether unknown in this country till the reign of Charles II. It was

then introduced by the Privy Council, in imitation of what had been done in England, for the purpose of repressing the religious sectaries.

Upon this subject the authority of Sir George Mackenzie seems to be decisive: "But with us no judge can confine a man whom he banisheth to any place without his jurisdiction; because he hath no jurisdiction over other countries, and so cannot make any acts, nor pronounce any sentences relative to them." Again, in another place he says, "As to the sending away people to the plantations. It is answered, That none were sent away but such as were taken at *Bothwel Bridge*, or in *Argyle's Rebellion*; and the turning capital punishment into exile, was an act of clemency, not of cruelty." If transportation had been a punishment at common law, I apprehend, Sir George Mackenzie must have been too well acquainted with that law to think an apology for government necessary. The apology which he makes is, that these men had committed a capital offence, and therefore, says he, the turning capital punishment into exile, was an act of clemency and mercy, as otherwise they might have been punished by death. I therefore apprehend, that the punishment of transportation could only be inflicted in the case, that Sir George Mackenzie states, or where it is expressly pointed out by statutes, or in cases where the punishment is altogether discretionary, which it is not under the act 1703.

The Roman law has, as your lordships know, made a material distinction between banishment and transportation. Under a law authorizing the punishment of *regulatio* merely, the more severe punishment of *deportatio in insulam* could not have been inflicted. relative to.

In judging of a matter of this kind, where a statute has expressly declared, that the punishment of these offences is to be *banishment*, the first thing to be done is to enquire into the common signification of the word 'banishment.' My lord, this is not a legal or a technical phrase: the whole world are bound to understand it; and it ought not so much to be referred to law-writers as to common-sense, and the etymology of the English language. It is a question of philology, rather than of law; and holding it to be such, I refer to the authothority of Dr. Johnson. He gives the following explanation: '*To banish*, to condemn to leave one's own country;' not a word of sending to another country. The examples given are the words addressed by Macduff to Malcolm:

"O fare thee well!
Those evils thou repeat'st, upon thyself,
Have *banished* me from Scotland."

Another signification of the word is 'to drive away:'

Banish business, banish sorrow,
To the gods belongs to-morrow.'

If your lordships could banish business, and banish sorrow along with it to Botany Bay, we should all be much obliged to you.

My lord, with regard to the statute 1703, chap. 4, I apprehend,

that by the recital of the acts therein given, there is demonstrative evidence afforded of the meaning of the word banishment. The statute 1609, chap. 9, which is quoted and its penalty partly repealed by the act of Queen Anne, 1703, declares that the persons convicted under it 'shall be severely punished in their persons and goods, by imprisonment, *banishment*, fining, or more rigorous corporal pain.' At the time this statute was passed, in 1609, it cannot be maintained, and is not pretended, that transportation was known in this country; because this country had then no jurisdiction beyond itself. If banishment, therefore, in the act 1703, signifies transportation, it must be made use of at once, in two different and contradictory senses. In the act 1609, banishment merely means, and can only mean, exile from Scotland. In the other acts recited in the repealing statute 1703, banishment, according to the public prosecutor, means transportation, that is, imprisonment in some foreign country, attended with every thing that is ignominious and painful. The term *banishment*, thus, in the act 1703, means, by this construction *both* or *either* of these punishments, altogether different in themselves, and of which we know certainly, that the *one* was *not* meant in one of the statutes repealed, and no evidence is brought that it *was* meant in any of the *others*. Such a construction is insufferable. The word banishment must be understood in one simple sense; and that is the sense in which it is employed in the act 1609.

Were it otherwise, the consequences are as absurd as they are dreadful. If the word banishment cannot be employed in two senses in the accurate language of a repealing statute, and if its simple sense be not *exile from Scotland*, but *transportation*, then the act, intended, and bearing, to be a mitigation of punishment, would increase, and in an enormous degree, the severity of punishment. The act 1609, repealed for its severity, is rendered still more severe. Transportation comes in place of banishment; and thus the Legislature, who in passing the statute of 1703, intended it as an act of mercy, have in reality committed an act of cruelty; instead of lessening, they have increased the severity of the punishment which then existed.

My lord, it has been said, that to sentence these men merely to exile from Scotland, would be preposterous, as it would not be an adequate punishment, and because it would leave them opportunities of committing the same offences in England. But if this is a preposterous penalty, I am sure the same preposterous thing is committed twenty times every year by your lordships; for how often is it that you banish thieves and pickpockets forth of Scotland, leaving them at liberty to go to England, where, as people's pockets are *generally* better filled than they are here, persons of this description will be enabled to exercise their profession with much greater advantage and success? But, my lords, a punishment so well known, in our own law, and in the laws of every country, as *banishment*, can never be called preposterous.

I stated two trials in the beginning of the present century: John

Graham was indicted for "leasing-making, and the utterance of slanderous speeches, tending to excite sedition, and alienate the affections of his majesty's subjects from his person and government; setting up the false and scandalous pretensions of another, by drinking the pretender's health, at the Tron Church, by the name of James VIII. and his happy restoration." My lord, there were other persons concerned in this crime besides him; the verdict was, "the crime not proven against Graham and Hay, but found proven against Crawford, upon his own confession:" the sentence was, "that he be amerciated in a fine of 50 l. sterling, and imprisoned till security found for payment."

My lords, in the other case of "John Oliphant, Alexander Wilson, and William Ramsay, bailies of Dundee, William Lyon, of Ogle, treasurer, J. Watson, vintner, indicted on the statute of Anne, and the acts contained in it, of leasing-making, &c. inasmuch as for abetting the pretender's right, they did go on the 10th of June, the pretender's birthday, to the cross of Dundee, and in a solemn manner, drink his health, by the title of King James VIII. king of these realms; and on the 20th of June 1715, a thanksgiving appointed by parliament for the king's accession, when the bells were ringing, Oliphant went up to the steeple, and prevented their ringing, and cursed the king."

11th July, 1715.

"The Lords Justice Clerk, and Commissioners of Justiciary, having considered the verdict of assize, returned on the 5th of July instant, against the said John Oliphant, &c. pannels, they, in respect thereof, by the mouth of Charles Kinross, Macer of Court, deprive the said John Oliphant, &c. of their offices of bailies of Dundee, and the said William Lyon, of his office of treasurer of the said burgh, and declare the said John Oliphant incapable of enjoying any public office or trust within the said burgh, or within that part of Great Britain called Scotland, in all time coming, and declare the said Alexander Watson, and Mr. Thomas Wilson, incapable of enjoying any public office or trust, in the said burgh of Dundee, in all time coming, and also, declare the said Mr. William Ramsay and Mr. William Lyon, incapable of enjoying any public office or trust, within the said burgh, for the space of three years next, after the date hereof; And sicklike, the said lords fine and amerciate the said John Oliphant, in the sum of two hundred merks Scots, and the said Alexander Watson in the sum of 100 l. Scots, and the said Mr. Thomas Wilson, in the sum of one hundred merks Scots money, foresaid, to be paid to his majesty's Receiver General for his highness use: And ordain, the said John Oliphant, Alexander Watson, and Mr. William Ramsay, William Lyon, and Mr. Thomas Wilson, to be carried to the Tolbooth of Edinburgh, there to remain until the 10th of August next, inclusive: And the said John Oliphant, Alexander Watson, and Mr. Thomas Wilson, to remain thereafter in the said prison, until they make payment of their said respective fines: And ordain, the magi-

ſtrates of Edinburgh, to ſet the perſons of the ſaid Mr. William Ramſay, William Lyon, at liberty, furth of the ſaid Tolbooth, after the ſaid day: And alſo, to ſet the perſons of the other three pannels at liberty, after elapſing of the ſaid day, upon producing their reſpective diſcharges of the ſaid fines, which is pronounced for doom."

In theſe caſes your lordſhips will obſerve, that an enormous offence had been committed againſt the government; and you have heard the puniſhment that was inflicted: whether it was, or was not equivalent to the offence, I leave entirely to your impartial conſideration. But my lord, certainly the circumſtances of the times then were at leaſt as dangerous as the preſent. Actual rebellion followed, and many unfortunate men fell in the conteſt. If any circumſtances could juſtify the extreme ſeverity of a ſentence they were thoſe which then exiſted. But all that it was thought neceſſary to do then was, to inflict the ſmall puniſhment which your lordſhips have heard. I may alſo notice, that in the laſt of theſe caſes, the pannels had been convicted of two offences, leaſing-making, and a malverſation in office as magiſtrates. Being thus guilty of two crimes, the accumulated puniſhments of fining, deprivation and impriſonment were inflicted upon them.—

Having ſaid ſo much, I ſhall now conclude. Before ſitting down I muſt yet mention one conſideration perſonal to this unfortunate gentleman himſelf. His ſtate of health is feeble, and in regard even to this there ought to be ſome meaſure of the puniſhment. Should he reach his place of exile, his puniſhment will indeed be ſevere. A man of high talents, of a cultivated underſtanding, is to be condemned to the communion of thieves and villains, the refuſe and dregs of the human race! In ſuch ſociety he is to be ſent to the deſolate ſhores of the remote ſouthern ocean. From thoſe hapleſs regions it may, perhaps, be poſſible to return; but from his ſtate of health it is highly probable that this gentleman will never even arrive at his miſerable deſtination. His ſentence of exile will have been to that 'undiſcovered country, from whoſe bourn no traveller returns.'

I know that the *humanity* of your lordſhips will make you pauſe before you pronounce a judgment of which ſuch muſt be the conſequences.

Lord Juſtice Clerk. Mr. Gillies, you have done ample juſtice to your client, you have managed his defence in a very able manner.

Mr. Montgomery. My lord, after the very able and full diſcuſſion which this queſtion underwent a fortnight ago, not only by your lordſhips, but by the counſel on both ſides, I ſhould conſider myſelf much to blame, were I to conſume a great deal of your lordſhip's time, by entering at large again into the field of argument then ſtated, becauſe I feel myſelf incapable of giving any additional illuſtration or adding weight to the argument then ſo ably ſtated by the Solicitor General.

My lords, the counſel for the pannel has endeavoured to maintain before your lordſhips a variety of propoſitions, all of which it is in-

cumbent upon him to make out before his client can derive any benefit from them. The firſt was, that this libel was too general, that it includes verbal ſedition, and that therefore ſuch a general indictment ought not to be found relevant to the knowledge of an aſſize. It is very true, both verbal and real ſedition are known to the laws of this country; but it is not from the major propoſition alone that he is to learn which is meant to be charged; but he is to look to the minor propoſition, and if there is ſuch a thing exiſting in the law of this country as real ſedition he will there find it.

His next propoſition is, that if this indictment is not on account of its generality to be laid aſide entirely, it muſt be preſumed that ſimple ſedition, or leaſing-making, only is the crime laid, and that your lordſhip in the interlocutor would ſo find it; and he inſtanced the caſe by an example which I ſhould have taken to prove the contrary; for it is very well known, that, for the crime of theft, either a capital or an arbitrary puniſhment may be inflicted. The uſual mode of laying indictments is the ſame, that the crime is of a heinous nature, and ſeverely puniſhable; and from the minor propoſition you are to learn whether it is ſuch a crime as will infer an arbitrary or a capital puniſhment.

My lords, he has ſtated three different propoſitions: In the firſt place, that there is nothing criminal ſet forth in the indictment, and that therefore it ought to be diſmiſſed entirely, becauſe it contains nothing upon which puniſhment can be inflicted. In the ſecond place, that if there is any thing criminal, it can only amount to leaſing-making, which infers a ſmaller puniſhment, and not to real ſedition, which infers a greater puniſhment.

And the object of both theſe propoſitions was to make way for the laſt and main object, namely, to ſhew that under the term baniſhment in the act 1703, exile from Scotland, only, and not tranſportation was intended.

My lord, with regard to the firſt that there is noting criminal charged in the libel, I ſhould think it an indignity offered to your lordſhips and to the jurors who tried the former caſes, and found thoſe perſons guilty, to take up much time in proving that it contains matter highly criminal and deſerving of very great puniſhment. Mr. Gilles aſked if there was any thing wicked, if there was any thing ſeditious, or if there was any thing criminal in uſing the words *ça ira*, or in uſing French terms in this convention, unleſs the object of their meeting was criminal.

My lord, in order to judge of the criminality of this libel, I apprehend we ſhould lay the whole of the facts together, and I will appeal to the underſtanding of every man, whether he can figure to himſelf a more flagitious crime than that charged againſt the pannel, namely, joining a conſpiracy againſt the government of this country, which they have endeavoured to promote to the utmoſt of their power, uſing French terms *vive la convention*, *ça ira*, Liberty Hall, Li-

berty Stairs, and ſo on, as general circumſtances, go to prove that the pannel at the bar, with other perſons, have met for the deteſtable purpoſe of overturning the conſtitution.

My lord, my brother has endeavoured to take off the effect of this moſt extraordinary declaration, which thoſe gentlemen not ſatisfied with ſimply reſolving, but thought neceſſary to bind themſelves to the performance of by an oath. He ſays, in arguing the relevancy, they made this reſolution, no doubt but the act, the paſſing of which they meant to oppoſe, has not yet taken place, and therefore it is no crime; that is not the fact here ſtated. The charge here ſtated, is an attempt to intimidate the government of this country, that if a law paſſed, which they foreſaw muſt paſs, if their operations were not put an end to, they were declaring and binding themſelves, that if ſuch an act paſſed, they would ſtill continue to meet to introduce annual parliaments and univerſal ſuffrage, till ſuch time as they were compelled to deſiſt by ſuperior force. The gentlemen ſay, that their object was merely to bring it about by peaceable means.—Is it by peaceable means that they intend to do it, when they tell you that nothing will prevent them but ſuperior force. Is that peaceable means? Is that the language of a man who means to remonſtrate? No; it is held out as a threat againſt the government of the country, daring them to do an act which they know muſt cruſh their proceedings.

My lords, my brother has gone on to ſubſequent reſolutions, and one inſtance he gives, that they had only peaceable objects in view; that they were not to meet after the act was paſſed, but that they were to act immediately upon the firſt notice given of a convention-bill; that their object was to procure a number of ſubſcriptions, in order that they might go up to parliament with ſuch force as to prevent the poſſibility of miſcarriage. That is his argument, and ingenious it may be, were it not contradicted by circumſtances. From the indictment your lordſhip ſees, that the members of this convention are to be entruſted with a ſealed letter, to be given to their conſtituents, containing the name of the place in which they are to meet in ſecret, which themſelves are not to know, much leſs the vaſt number of perſons whoſe ſubſcriptions they are to get; and that is the mode which is to have the effect of preventing, or rather of reſiſting the execution of this act.

My lord, it is further ſaid, that they had another object in view, the reſiſtance of an invaſion; and that this letter muſt be underſtood to have applied to a meeting of the convention for that purpoſe. A very likely ſtory, that a meeting of ſeven, being all that was required to declare their meeting permanent, or at moſt twenty-one, that ſuch a meeting was to reſiſt, far leſs repel an invaſion made upon this country. My lord, I apprehend nothing farther need be ſaid with regard to the criminality of the charge as ſtated in this indictment. My lord, the gentleman himſelf has given ſufficient evidence, that they were not to meet for the purpoſe of petitioning parliament,

which is legal and conſtitutional, and there are meetings for that purpoſe which are attended by people of the greateſt reſpectability. But this ſeems not to be their object; for the gentleman himſelf ſays, that this meaſure of theirs may be thought by ſome a bold, by others a daring meaſure. Did the gentleman mean, when he ſaid this, that the people were to believe that the object they had in view was merely to petition parliament? No; and he could not have deſcribed it in more emphatical language, which, I am ſure, every perſon who hears it will feel highly applicable to the proceedings of the Britiſh Convention.

My lord, with regard to the next propoſition, namely, that this is leaſing-making only, and that the act 1703 ſhould have been ſpecially libelled on. My anſwer is very ſhort, that it is not leaſing-making, but real ſedition; a crime well known to our laws long before the exiſtence of any ſtatute. Every lawyer who has treated upon the ſubject, has not only made a diſtinction between leaſing-making and real ſedition, but between real ſedition and high treaſon.

My lord, much, no doubt, may be ſaid with regard to the definition of real ſedition; for, from the great variety of ſhapes which this crime may aſſume, and the various degrees of guilt which the actors incur who commit theſe crimes, it is abſolutely impoſſible to give any juſt definition of the crime, ſo as to comprehend every poſſible caſe; but there are to be found treatiſes in the criminal law which point out a clear diſtinction, and ſhew that the charge here laid comes within the crime of real ſedition.

My lord, I will beg leave to read the definition of Erſkine—the firſt I ſhall read is in his ſmall compend. He ſays, 'It conſiſts in raiſing commotions, or diſturbances in the ſtate; it is either verbal or real. Verbal ſedition, or leaſing-making, is inferred from the utterring of words tending to create diſcord between the king and his people. It was formerly puniſhed by death and the forfeiture of goods, but now, either by impriſonment, fine, or baniſhment, at the diſcretion of the judge. Real ſedition is generally committed by convocating any conſiderable number of people, without lawful authority, under the pretence of redreſſing ſome public grievance, to the diſturbing of the public peace.'

My lord, in his larger work, he ſays, 'The crime of ſedition conſiſts in raiſing commotions and diſturbances in the ſtate. It is either real or verbal. Real ſedition is inferred from an irregular convocation of a number of people, without lawful authority, tending to obſtruct or trouble the peace of the community. Such commotions as are aimed directly againſt the ſovereign or ſtate amount to high treaſon; but where they are raiſed merely to redreſs ſome ſuppoſed grievance, it is the crime which falls properly under the term Sedition.' In like manner a ſmall book

noticed formerly by one of your lordſhips, Bayne ſays, 'Sedition 'is an irregular commotion of the people, or convocation of a 'number of citizens, aſſembled without lawful authority, tending 'to diſturb the peace and order of ſociety.' Is not this the very crime here ſtated? I apprehend, what has led my brother into an error has been the confounding of the different ſenſes of the term commotion. Commotion, in an enlarged ſenſe, may no doubt ſignify a riſing in arms againſt the government of the country; but, in another ſenſe, it may ſignify an illegal convocation of people, without lawful authority, tending to diſturb the peace and order of ſociety. I ſay, if it was otherwiſe, there could be no ſuch thing as real ſedition; becauſe, the moment, according to them, that it becomes real ſedition, it ceaſes to be ſedition, it is high treaſon, not only by the treaſon laws as they now ſtand, but is clearly high treaſon in the old treaſon laws. Therefore, I apprehend, the diſtinction between real ſedition, and verbal ſedition, is perfectly obvious. It is not neceſſary, in order to conſtitute real ſedition, that there ſhould be a riſing in arms; for the moment there is a riſing in arms, it ceaſes to be ſedition. Leaſing-making, on the other hand, implies this, and no more, the uttering or ſpeaking, either in convocations or ſpreading by means of libels or hand-bills, any wicked, falſe, ſcandalous ſpeeches, which tend to introduce jealouſies among the people, and to overturn the ſtate. But ſedition may exiſt without uttering any ſcandalous and falſe ſpeeches; as, for inſtance, when this gentleman declared and bound himſelf by an oath, to reſiſt any act that might paſs to prevent the meeting of this convention—this was not a falſe ſpeech; it contained, in a melancholy truth, that theſe people ſet themſelves up in defiance of the law of the country, and declared they would not deſiſt from their wicked proceedings till they were compelled by ſuperior force.

My lord, it is not neceſſary to look to our ſtatute book, for the exact definition of ſedition, or when it was firſt introduced into the law of Scotland; for it has been well obſerved, by all of your lordſhips, that it muſt have exiſted, not only in this, but in every country; that it is coeval with the exiſtence of ſociety itſelf, becauſe it is impoſſible that any country can exiſt, if the crime of ſedition be allowed to paſs without any puniſhment at all. In the law of Scotland, it exiſted for many generations, before it became the object of ſtatute law, till the puniſhment applicable by the common law was not ſufficient to refrain the vices and wickedneſs of the people; and then acts were made only regarding theſe particular ſpecies of ſedition which appeared to be moſt criminal, and which appeared to be moſt levelled againſt the government of the country. At that time it never occurred to the juſtice of the legiſlature, and it would have been unjuſt if it had, to have framed an act ſo comprehenſive as to include every ſpecies of crime which could fall under the term of ſedition, becauſe they muſt have

known that it is a crime, not only infinite in its variety, but alſo infinite in its degrees and ſhades of guilt. Particular acts of ſedition were declared to be capital, and with reſpect to ſome of them, I muſt call your lordſhips attention, for they contain a particular ſpecification of the crime here charged; and had this gentleman been tried, prior to 1709, when the old treaſon laws exiſted in this country, he muſt have been tried for high treaſon, and puniſhed with death.

My lord, the firſt of theſe ſtatutes was ſtated by the Solicitor General, when he firſt argued the caſe to your lordſhips, 1584, chap. 130, 'Therefoir it is ſtatute and ordained, be our ſaid ſoveraine 'lord, and his ſaidis three eſtaites in this preſent parliament, that 'nane of his lieges and ſubjectes preſume or tak upon hand to im-'pugne the dignitie and the authorite of the ſaidis three eſtaites, 'or to ſeek or procure the innovation or diminution of the power 'and authoritie of the ſame three eſtaites, or any of them, in time 'cumming, under the paine of treaſon." Does not this gentleman, I would aſk, impugn the dignity of the eſtates of parliament, when he ſays, that they would pay no regard to the wiſdom of parliament, and that they would continue to meet till ſuch time as they were compelled to deſiſt by ſuperior force; and he does not content himſelf with that, but juſtifies their doing ſo upon the laws of God, and right reaſon: he ſays, 'if ſuch a law were ſuffered to 'paſs, if men were not allowed to utter their complaints, a number 'of fierce and rancorous paſſions would ariſe, and we would ſeek 'to appeal to that laſt terrible deciſion, the event of which is un-'certain, but which God and nature allows." Here the gentleman is not only ſaying, but binding himſelf by an oath, that if the legiſlature ſhould enact a particular ſtatute, they would reſiſt it, by continuing to meet, till they were compelled to deſiſt by ſuperior force. Here they are telling the whole country, that their reſiſtance is ſanctioned by the laws of God, and the laws of reaſon. I apprehend it to be clear therefore, that if he had been tried prior to that act, he muſt have been tried and puniſhed for high treaſon, according to the ſtatute I have now read, which inflicts the puniſhment of death. But, my lord, there is another act applicable to the preſent caſe, it is the act 1662, chap. 2, 'An act for the pre-'ſervation of his majeſty's perſon, authority, and government. 'And ſince the riſe and progreſs of the late troubles, did in a great 'meaſure, proceed from ſome treaſonable and ſeditious poſitions 'infuſed into the people, *that it was lawful to ſubjects for reforma-'tion to enter into covenants and leagues, or to take up arms againſt 'the king, or thoſe commiſſioned by him, and ſuch like;*" and ſo on till it comes to the following enactments. 'Like, as his ma-'jeſty and eſtates of parliament, reflecting on the ſaid conſequences 'of theſe rebellious courſes, and being careful to prevent the like 'for the future, have therefore ſtatute and ordained, and by theſe 'ſtatutes and ordains, that if any perſon or perſons ſhall, hereafter

'plot, contrive, or intend death, or deſtruction, to the king's ma-
'jeſty, or any bodily harm tending to death or deſtruction, or any
'reſtraint upon his royal perſon, or to deprive, depoſe, or ſuſpend
'him from the ſtile, honour, and kingly name, of the imperial
'crown of this realm, or any others his majeſty's dominions, or to
'ſuſpend him from the exerciſe of his royal government, or to le-
'vy war, or take up arms, againſt his majeſty, or any commiſſion-
'ed by him, or ſhall entice any ſtrangers or others to invade any
'of his majeſty's dominions, and ſhall, by writing, printing, preach-
'ing, or other malicious and deviſed ſpeaking, expreſs or declare
'ſuch their treaſonable intentions, that then theſe perſons are to
'ſuffer death, as in caſes of treaſon." Have not the gentlemen expreſſed, in the ſtrongeſt terms, and bound themſelves by oath, that they would reſiſt the government, and that they would reſiſt it by force? And they juſtify force by the laws of God and reaſon. Is not this then an intention of levying war againſt the king? Therefore, if the gentleman had been tried upon this ſtatute, prior to the ſtatute of 1709, he might have been puniſhed as a traitor; becauſe he has declared his intention to be to make war againſt the government, till ſuperior force compelled them to deſiſt. If the gentleman had been tried, even after the paſſing of the act 1703, and before 1709, he muſt have been tried and puniſhed as a traitor. And, my lord, what effect is the introduction of the treaſon laws into this country to have? Are theſe acts of ſedition, of ſuch an aggravated nature, as are declared treaſon by law, not to be liable to any puniſhment whatever? For, my lord, admitting that there is no ſuch thing as real ſedition, then I ſay the act 1703, give it the wideſt range poſſible, never can reach thoſe acts of ſedition, which were declared treaſon by former acts. But, my lord, the natural conſequence of the operation of the treaſon laws of England, coming into this country, is not to have the effect of leaving theſe crimes without puniſhment at all, but leaves them exactly in the ſame ſituation in which they were before this act of parliament was introduced; and your lordſhip is intitled to puniſh, at common law, as your lordſhip would have done if the caſe had been tried prior to the paſſing of theſe acts.

My lord, if I am right in this poſition, that this crime is real ſedition, and that falling under thoſe acts, it might have been puniſhed as treaſon, it is matter of very little conſequence what is meant by the word baniſhment; becauſe in the firſt place I apprehend this caſe is not leaſing-making, as I have endeavoured to ſhew your lordſhip; but ſuppoſe the caſe were leaſing-making, I am not bound, in this caſe, to lay the libel upon the leaſing-making ſtatutes; for, although it was well obſerved by your lordſhips that where an act creates a crime, and ſpecifies the puniſhment to be annexed upon the conviction of ſuch a crime, we muſt apply the ſtatutory puniſhment. But, my lord, it often happens, that acts of parliament are introduced where the crime exiſted at common law before; and, in theſe caſes,

whether the acts introduced a leſſer or higher puniſhment, unleſs the act ſpecially takes away the crime at common law, ſpecially deprives you of the juriſdiction inherent in this court, of trying at common law, there is no occaſion for that ſtatute. Your lordſhips know when the crime is made greater, I may charge it either upon the ſtatute or the common law; and it often happens that the object of the ſtatute is to give juriſdiction to a court that it had not before, or to introduce a more ſummary mode of puniſhment; and, in that caſe, unleſs the act declares that you are not to try at common law, it is not to be preſumed that the common law power is taken away. For, in the caſe of bribing the exciſe officers, though it is puniſhable at common law, there are ſtatutes impoſing ſevere fines; and your lordſhip will recollect, in the caſe of Mr. Stein, for bribing Mr. Bonar, it was ſtrongly urged that, as the act introduces the puniſhment of ſevere fine, you are not entitled to diſregard this act and go to a trial at common law, but you muſt lay the libel upon this ſtatute, and confine yourſelf to the puniſhment inflicted by that ſtatute; but your lordſhips common law powers are not taken away, and therefore you are entitled to try and puniſh that gentleman at common law.

My lord, I may exemplify this caſe by an inſtance which has been introduced by my brother; in pleading this caſe, he mentioned the caſe of ſeveral people tried upon the leaſing-making ſtatutes. Thoſe perſons were not tried upon the leaſing-making ſtatutes alone, for they were tried upon the laws of God, and upon the laws of this and every other well governed realm. I will alſo refer the gentleman to another caſe, in 1712, when the party tried, and the able counſel who defended him, knew perfectly well the meaning of the word baniſhment. His indictment is laid upon the act 1703, and is alſo laid upon the laws of God, and of this and every other well governed realm. The counſel for that gentleman pleaded a variety of objections to the relevancy of that indictment, but it never occurred to the gentleman to ſtate, that it was not competent for the court to try him both upon the common law of this land, and upon the ſtatute law. My lord, it never occurred to him that the puniſhment was different by the common law; they never aſked your lordſhips to diſmiſs the indictment, becauſe it was laid upon both laws, nor did they argue that your lordſhips ought to define and declare to the jury, that the term baniſhment, in this act, was exile and not tranſportation:—No ſuch thing, and it cannot be ſuppoſed that it was through ignorance, for they were men learned in the law, and living at the very time the acts were made.

My lord, this, in my mind, affords a ſtrong argument, not only to ſhew that an indictment is relevant at common law, although an act of parliament has been introduced, making it a crime, and ſtating a particular puniſhment, unleſs that act deſtroys your lordſhip's power at common law: it goes to ſhew that under the word baniſhment, tranſportation is likewiſe included, or the gentlemen would certainly have inſiſted upon ſo material a thing for the ſafety of their client.

My lord, this leads me to take notice of the laſt propoſition, which is the main object of the whole argument in this caſe, namely, that exile, or baniſhment from Scotland, only ought to be the puniſhment.

My lord, I will not follow the gentleman into dictionaries to look for the term; and the one that he has found does not ſeem to afford him any aſſiſtance. But, if I can ſhew that tranſportation was conſidered as included in the term by the lawyers of the times, and by hiſtorians of the times, there is an end of this queſtion; for, independent of the various ſentences which were read to your lordſhips upon the laſt occaſion, and which I ſhall not conſume your lordſhips time by reading again, from the books of adjournal of this court, not only prior to the paſſing of the act 1703, but down to 1756, when the puniſhment of tranſportation was introduced, I ſhall refer your lordſhip to the ſentences of the Court of Seſſion, which ſhew that they underſtood baniſhment in the very ſame ſenſe; and prior to 1756 there are a variety of caſes which ſhew, that from the incidental juriſdiction they had in the puniſhment of forgery, they are entitled at common law, without the aid of any ſtatute, to ſend people to the plantations; and the uniform form of the ſentence is in theſe words, 'ordain that he be carried back to priſon, there to remain till an opportunity offers of carrying him to ſome of the plantations in America, there to be baniſhed for ever.' In ſome caſes, it is baniſhed for ever, in other caſes, for a certain number of years.

My lord, I might alſo reſort to the hiſtorians of the times—I will read to your lordſhip one paſſage from Guthrie's Hiſtory, which clearly ſhews that he underſtood tranſportation to be included in the word baniſhment. Immediately after the execution of the Duke of Argyle, in 1685, Guthrie, ſpeaking of what acts of parliament had declared, ſays, 'they declared their abhorrence and deteſtation of all reſiſtance, upon whatever pretext, by deed, word, or writing; and, at laſt, they paſſed an act to approve whatever had been done by his majeſty's Privy Council, Juſtice Court, and thoſe commiſſionated by them in baniſhing, impriſoning, or fining ſuch as refuſed to take and ſwear the oath of allegiance, and to aſſert the royal prerogative in their utmoſt extent.'

Your lordſhip knows, that in this reign, and in the reign of his brother Charles II. a number of unfortunate people, becauſe they would not ſubſcribe bonds of peace and the oath of allegiance, were ſent by the Privy Council to the plantations, by ſhip-loads; and alſo a number of conventiclers were remanded back to priſon, till an opportunity ſhould be afforded of tranſporting them to Barbadoes, where no leſs than eighty of them were lying for tranſportation. The king would never ratify a deed of the Privy Council, who baniſhed a man from his dominions in Scotland, to his dominions in England, becauſe he would not ſwear the oath of allegiance. It is perfectly well known, that hundreds of our fellow-citizens were ſent in thoſe days to the plantations. My lord, I

do not read this as an example for imitation; no man can juſtify ſuch arbitrary proceedings; but no man, I am ſure, was ever ſent from Scotland to England, becauſe he refuſed to take the oath of allegiance. I will ſay there is no inſtance of ſuch a caſe to be found; they were all ſent to the plantations; and, when your lordſhip ſees this author, when ſpeaking of thoſe tranſportations, makes uſe of the word *baniſhing* only; and therefore, it is very clear that his idea of the word was the very ſame which I am now contending for before your lordſhip, namely, that the word baniſhment is a general term; that tranſportation is only one mode of carrying it into effect, and that under the term baniſhment, tranſportation was intended by the act 1703.

My lord, independent of that, I might aſk your lordſhip, is it natural to ſuppoſe, if it was their intention under this act, that no man ſhould be tranſported, that they would have made uſe of the very term which this Court have uniformly uſed when they inflicted the puniſhment of tranſportation. No, my lord, the very reverſe is the natural ſuppoſition. Beſides, I might ſtate to your lordſhips that the object of the legiſlature was merely to take away the capital part of the puniſhment; that is perfectly clear from the words of the act itſelf. It ſays, 'that in reſpect of their generality, and the various conſtruction which the ſame may admit, they 'may be as to the foreſaid capital puniſhment, of dangerous conſequence, doth, therefore, with advice and conſent of the eſtates of 'Parliament, abrogate and diſcharge, in all time coming, the foreſaid ſanction and pain of death and confiſcation contained in the 'ſaids acts; and ſtatutes and ordains, that the puniſhment of the 'crimes, therein mentioned, ſhall for hereafter only be arbitrary," and then enumerates the puniſhment of baniſhment, fining, and impriſonment, which were the common law puniſhments then in uſe. My lord, I beg leave to refer your lordſhips to the act 1701, where the power of tranſportation by this Court is expreſsly recognized. 'As alſo that no perſon be tranſported furth of this kingdom, except with his own conſent, given before a judge, or by legal ſentence.' I would aſk the gentleman where is the legal ſtatute which authorizes tranſportation? I may, perhaps, be told, that the act 1670 authorizes tranſportation, becauſe they were to be baniſhed to the Indies; but I will remind them, that that act was reſcinded in 1690, the ſecond act of the ſecond parliament of Charles II. Here is the only act which mentions the baniſhing a man to the plantations, reſcinded in 1690; and yet, in 1701, we find an act expreſsly recognizing the power of tranſportation; becauſe it ſays, that no man is to be tranſported but by his own conſent, or by legal ſentence. Where then is the ſtatute that authorizes tranſportation? I ſay there is no ſuch thing; and therefore it is clear that it is included in the term baniſhment, otherwiſe there can be no legal ſentence of tranſportation. The gentleman ſays that, by

the act 1703. baniſhment is to be underſtood; and when an act enumerates baniſhment, fining, and impriſonment, that you are not to enlarge thoſe, or introduce any other puniſhments which are not there ſpecifically mentioned. I ſhould be glad to know what explanation they are to give of the laſt clauſe of the act 1670, with reſpect to their refuſing to depone as to conventicles. The object of that act was to diſcover meetings of conventiclers, and to declare the puniſhment to be inflicted upon thoſe who ſhould refuſe, when called upon, to ſay what they knew reſpecting theſe conventicles; the puniſhment is to be fining, cloſe impriſonment, or baniſhment. The legiſlature foreſaw that when the man was called upon to declare what he knew, he might include and blame himſelf by ſo doing, and therefore it was thought neceſſary to enact a clauſe freeing him from the puniſhment, and therefore it was provided, that no man's declaration againſt any other perſon ſhould infer againſt himſelf the loſs of life, or limb, or baniſhment.

My brother has told your lordſhip, upon the authority of Sir George Mackenzie, that baniſhment by tranſportation was illegal, becauſe it is impoſſible to confine a man to any place to which he is baniſhed, as though your lordſhip had a juriſdiction over him while he is in that place undergoing the ſentence of baniſhment; but that is not the caſe, for from the moment he has once landed, your lordſhip has no further authority; you are not confining him there; he may go where he likes, provided he does not return to this country. My lord, he has alſo appealed to another paſſage in Mackenzie, to ſhew that this was an illegal ſentence in his juſtification of the reign of Charles II. where it is ſaid, that people were ſent abroad from a principle of mercy, becauſe theſe people might otherwiſe have been puniſhed by death; and, my lord, it is very true as applied to thoſe people who were taken at Bothwell Bridge in 1679; becauſe hiſtorians tell us, that about 1200 of them were taken with arms in their hands, and in open rebellion, it was therefore mercy to ſend them abroad and not try them for their lives; but it was only thoſe perſons who refuſed to ſubſcribe declarations that by the act 1670 were to be ſent abroad, and the privy council had an expreſs power of ſending them to the plantations.

My lord, it is a miſtake to ſay, that ſending people to the plantations, was for the firſt time only introduced at the time of the rebellion at Bothwell Bridge; for all thoſe who were taken, a great many years before at the rebellion which was cruſhed at the Pentland Hills in 1667, I think, were ſent there likewiſe. And if your lordſhip reads the hiſtory of this country prior to 1660, you will find a variety of inſtances where people were ſent to the plantations for refuſing to ſubſcribe bonds of peace, and refuſing to take the oath of allegiance. When was the firſt time it was introduced into this country, I know not, however, I know from hiſtory, that it was not upon the paſſing of that act 1660; becauſe, my lord, I read of ſhip loads of unfortunate people having been ſent away, who thought it

inconſiſtent with their duty to ſubſcribe bonds of peace. My brother has referred to the act of 1609, which mentions baniſhment; and his argument is that tranſportation could not have been intended, becauſe tranſportation was unknown in thoſe days, and therefore it appears ſingular that the act 1609, when repealed by the act 1703, on account of the ſeverity of its ſentence, ſhould have enacted a puniſhment much more ſevere than the former. Upon what foundation or authority the gentleman ſays, a perſon could not have been tranſported under the act 1609, I am at a loſs to diſcover; for they had juſt as much a power, and juſt as much an opportunity of tranſporting in 1609, as they had in 1660, when I know a great many tranſportations took place.

My lord, I ſee no reaſon why tranſportation could not have been indicted under in the year 1701, as well as 1660. But I will read to your lordſhip the laſt clauſe of the act 1609. "And nevertheleſs, finding therin ſik malicious letts as the devile and his ſuppoſts do uſually ſuggeſt to the hindrance of all juſt and godlie interpryſes, ſpecially, by the falſe and calumnious brutes; ſpeeches, and writs, craftelie uttered and diſperſed by ſome lauleſs ond faulles people of this realme, aſwell in privat conferences as in their meetings at taverns, ail houſes and playes, and by their paſquills, lybels, rymes, cockalans, commedies, and ſiklyke occaſions, whereby they ſlander, maligne, and revile the people, eſtate, and country of *England*, and divers his majeſties honourable counſellers, magiſtrates and worthie ſubjects, of that his majeſties kingdome. The continuance whereof being able to incenſe the people of *England* to juſt grief and miſcontentment, may not only hinder the intended union of all the good ſubjects of this monarchie, but ſtir up in them ſik irreconciliable evil will, as with time might bring forth maiſt dangerous and harmful effects." Can your lordſhip believe, that as a puniſhment to men who had produced ſuch irreconcileable hatred between the two kingdoms, this act intended that they ſhould be baniſhed into England, where they would have a much better opportunity of completing their purpoſe than they could have in Scotland. I am perfectly ſure a judge would have been laughed at who had ſent ſuch a man into England. I am ſatisfied that no ſentence ever was paſſed upon this act. It was an act paſſed by Scotland, under the impreſſion that England would pronounce a ſimilar judgment. In evidence of this I ſhall read to your lordſhip what Sir George Mackenzie ſays. 'But, in my opinion, this act reaches only ſuch as ſpeak reproachfully of their nation, country, and counſellors; but the whole act ought to be abrogated by our parliament, as being paſt by us in expectation that England would make ſuch an act in their parliament, which they never did; and, upon which account, it was never in obſervance with us." I am perfectly ſatisfied that if this act had ever been put in force, if any ſentence had ever been impoſed, it muſt have been tranſportation.

My lord, I don't feel it neceſſary to trouble your lordſhip any

further, neither of the positions laid down by my brother being applicable to the present case, because it is not leasing-making, but sedition, so near the crime of treason, that by the ancient treason laws of Scotland, it would amount to treason. The act at common law remains in full force, and I am perfectly clear whether you take the intention of the legislature, or whether you take the words themselves as explained by historians, by the legislature itself, and by the sentences of this Court and the Court of Session, your lordships cannot have a doubt, but that under the act of 1703, you have it in your power to send this gentleman, or any other who may be found guilty of sedition, to transport him beyond seas.

Lord Justice Clerk. Mr. Montgomery, you have gone into it very ably and very fully.

Mr. Solicitor General. My lords, the points which you have now heard debated, are points upon which I have made up my mind most fully, and which I should not be afraid to argue in any court, in any place, or against any opponent. But, my lord, when I consider that this matter underwent a very full discussion this day fortnight, and when I consider that your lordships, then heard these points stated with all the ability which the bar could furnish (and I cannot suppose that your lordships, have drank so deeply of the waters of Lethe, as to have forgot what passed upon that occasion,) I think it unnecessary to trouble your lordship with many words, more especially as so much justice has been done to it, by the gentleman who has already spoken.

My lord, as to the first point, whether there is such a crime known in our law as that of sedition, I shall not say a single word, because no person who knows any thing of our law, can entertain a single doubt,

The next point is, whether the facts charged in this indictment do amount to the crime of sedition, yea or no? and after what we have heard so fully discussed, and after what your lordships have determined upon the subject, I cannot suppose that any argument is necessary upon this branch of the subject.

My lord, you have been told that all the crime which this pannel has committed, is the entertaining ideas favourable to universal suffrage and annual parliaments, and in which ideas he was sanctioned by the most respectable names. My lord, whatever opinion those persons may privately entertain, I have not an opportunity to know, but I beg leave to ask of the counsel on the other side, who, I dare say, are better informed than I am. Have Mr. Pitt and the Duke of Richmond ever formed a convention in England? Have they ever called themselves the British Convention? Have they ever called themselves the representatives of the body of the people? Have they ever told the parliament of Great Britain, that they shall not presume to disperse them? Have they ever told them that if they dared to bring into parliament a certain bill, they will resist it by force? Or

have they told the public, that in case of an invasion, they will meet in a secret place? If they have done so, it has been unknown to me —and if they have, it says very little for those to whom the criminal laws of England are entrusted. But as far as I know, no such thing has ever happened.

My brother, Gillies, who pleaded the cause with very great ability, told your lordship, that even if the facts stated were proved, as well as the criminal intention, (which I admit is absolutely essential) that in that case the libel ought not to be sustained as relevant, in so far as the charges amount to high treason. Now, my lord, I will so far agree with my brother, that in making out this charge before the jury, it will be necessary for me to satisfy them that he had a criminal intention, and if my brother can shew me, that the facts charged in this indictment do come within the treason act, of Edward III. we shall very soon make a short argument of this case, because I shall immediately desert the diet. We shall have no more trial upon this indictment, but I shall immediately apply to your lordships, that that gentleman be committed for high treason. It is a thing I have fully considered, and I am perfectly satisfied. I have no doubt of proving the intention, of which the jury will judge, and that they amount to something which is very near treason, the most aggravated species of sedition that can be imagined.

My lord, the only other point for consideration, relates to the degree of punishment which your lordships have power to inflict, supposing the crime to be proved. Now, my lord, I apprehend it is perfectly well established, that banishment by transportation, which I say is a particular mode of banishment, is known to the common law of Scotland; it was a power exercised by the Court of Session without a statute, and exercised by all the criminal courts in Scotland. When this practice was first introduced, it is impossible for me to say; but, I believe, much earlier than is generally supposed. It is sufficient for me to state, that transportation is known to the law of Scotland, and is acknowledged and recognized in the fullest manner, by the act of 1701.

The question therefore is, whether your lordships in judging of the crime of sedition, are restrained from inflicting that punishment, supposing it to be a legal one. I must first shew it to be a legal one, and then, whether there is any statute which restrains the power of the court; and this leads me to consider the act 1703, which is the single act that the gentleman found upon, as limiting the power of the court; and upon this statute it is necessary for me to say very little. Upon looking at the enacting clause, it appears to me, that the only purpose of the statute was to take away the capital part of it. It is very true, the act says that the court shall inflict the punishment by fine, imprisonment, or banishment; and my brother tells your lordship, that there is a very material difference between banishment and transportation, and he shows your lordship from Johnson's Dictionary, Shakespeare, and other respectable authorities, that banish-

ment and tranſportation are different things: but I take it to be a very clear point, that in judging of the ſtatute law of Scotland, we are not to go to an Engliſh dictionary, or to poetical writings—there can be but one authority, which is neither more nor leſs than the language of the common law of Scotland, and where are we to find it? We are to find it in the records of this ſupreme court—ſearch has been made in thoſe records, and by that ſearch it is made clear, I ſhould ſuppoſe beyond the poſſibility of contradiction, that according to the law language of Scotland, before the ſtatute, at the time of the ſtatute, aad after the ſtatute, that baniſhment did include tranſportation.

My lord, inſtances were pointed out to your lordſhip, which it will be unneceſſary to repeat, becauſe it is impoſſible that they can be forgotten, in all of which your lordſhips inflicted the puniſhment of baniſhment; and, in order to carry that into execution, you ordain and appoint the perſons to be baniſhed beyond ſeas.

My lord, I beg leave to mention one caſe which has not occurred before, and that is a caſe which happened in the month of February 1704, which your lordſhips will obſerve was juſt five months after paſſing the act upon which the gentleman found, the act of 1703, having been paſſed in the month of September, and this caſe was determined in the February following. It was a caſe which occurred before the Privy Council of Scotland, which your lordſhips know was at that time a court inveſted with a juriſdiction of a very conſiderable extent. It was a trial upon leaſing-making, (the very crime upon which the gentlemen found their argument) upon the 4th of February 1704, a libel againſt Mr. David Bailie, brother to Captain Robert Bailie, of Manor Hall, for leaſing-making, and the concluſion of it, after ſetting forth the fact is, that the aforeſaid David Bailie, ought to be ſeverely puniſhed for the ſame, with the pains of law, at leaſt conform to the 4th act of the laſt ſeſſion of the current parliament, entitled, "act anent leaſing-makers and ſlanderers." Here your lordſhip ſees this libel ſpecially refers to the ſtatute 1703, and prays, upon the party being convicted, that he ſhould be ſeverely puniſhed for the ſame, with the pains of law, at leaſt conform to the 4th act of the laſt ſeſſion of the current parliament. My lords, this was tried before a court who did not ſit at the diſtance of ninety years, but who ſat within five months after the act paſſed; and therefore, it is natural to ſuppoſe that they underſtood its meaning; and, my lord, I obſerve by the ſederunt, that the preſident of the Court of Seſſion was there, the Lord Juſtice Clerk was there, and many other of the judges, and therefore it is impoſſible they could miſtake its meaning. In the firſt place the party acknowledges the offence; and therefore there was no need of any trial as to his guilt; and in the next place he was aſſiſted by no leſs than ſix able counſel, and a great deal of argument there was upon it—but when you come to the ſentence, "the libel having been found relevant to infer arbitrary puniſhment, that the two letters libelled on

were all his hand-writing, the court hereby ordain and adjudge, that the ſaid David Bailie be tranſported to the Weſt Indies, that he be ſet in the pillory from eleven to twelve in the forenoon, and in caſe the perſon cannot pay the fine, to be tranſported, and to be kept in the priſon of Ayr until he be ſo tranſported."

My lord, I know very well that it is not the faſhion of the times to think a great deal of our anceſtors, but I ſhall admit, that in point of wiſdom, in point of philology, in point of philoſophy, and many other fine ſpeculative ideas, I will admit that our forefathers were by no means comparable to us in thoſe fine theories which modern philoſophy has found out with regard to religion and government; witneſs the glorious ſtate of France at this moment. But, my lords, can we underſtand that act better than they did? Did not they know their own meaning better than we do? And yet your lordſhip ſees the judges who ſat in that very parliament, within five months after ſitting in a court of juſtice, upon a caſe in point, they underſtood the meaning of baniſhment, and they tranſported him to the Weſt-Indies; and, my lord, this is not all, I ſee, at this time, the gentleman was not undefended, he was aſſiſted by ſix able counſel, and not one of them pretends to ſay he had the ſmalleſt doubt about it; they argued many points of law, but this was not ſo much as mentioned, it was clear beyond the poſſibility of doubt that it included tranſportation. I cannot have a doubt, but that your lordſhips, upon the fair conſtruction of this act, have the power, in caſe this pannel ſhould be convicted by the verdict of a jury; but it will be with your lordſhips to judge whether you think he merits it or not. This is a complete anſwer to the two caſes the gentleman has cited. The act does not bind you to tranſport, but it is an arbitrary puniſhment in the diſcretion of the court; and, in the preſent caſe, it will be with your lordſhips to judge whether you think the extent of the crime merits ſuch puniſhment. Your lordſhips can have very little doubt about the matter, and, I think the proper time for that determination, would be after the verdict of the jury.

Mr. Laing. My Lord Juſtice Clerk. By your lordſhips appointment I have undertaken a cauſe which I at firſt declined, not only from perſonal conſiderations, which I forbear to mention, but becauſe my recent avocations have been very different from the purſuits of this bar. The cauſe of my client, though undertaken by your order, is now my own; and I will plead for him, as I would for myſelf, were I placed in his ſituation at the bar. No conſiderations ſhall now deter me, nor ſhall the fear of obloquy relax my efforts to eſtabliſh his innocence, and overturn the prepoſterous charges of this indictment.

The arguments maintained on the relevancy may be reduced to three propoſitions, to which, whatever illuſtrations or additional arguments my recollection and my ſtrength may enable me to contribute, ſhall be ſpecifically directed.

1. That the facts charged in the indictment are not of a crimi nal nature; or if criminal, that they constitute merely a statutory offence.

2. That where the crime is provided for by statute, a severer, o a different punishment cannot legally be inflicted at common law.

3. That the punishment of the facts charged in the indictment if indeed criminal, are, as regulated by 1703, chap. 4, fine, imprison ment, or banishment; meaning thereby banishment forth of th realm alone.

My lord, on the first proposition, that the facts charged in the in dictment, if criminal constitute a statutory offence, the argument c the prosecutor amounts to this, that sedition is a technical or gene rick term, comprehending a variety of different crimes; yet unsus ceptible, at the same time, of a definition applicable to every crime That there is no definition of sedition strictly applicable to each case I shall readily admit, for the definitions given by our lawyers ar founded on a previous distinction between real, and verbal sedition The former is uniformly described as an actual commotion, or risin of the people; the latter, the utterance of false reports, or the pub lication of writings *tending* to excite such commotions, or to overtur the established constitution or government. My lord, this is nc an ideal distinction; it originates from the very nature of crime from the difference between the attempt and the deed, from th necessity of distinguishing between what is actually committed and that which is perhaps an abortive attempt to effect the deed In murder, a conspiracy against our neighbour's life, when carrie into execution, must be distinguished from an attempt to instigat another to the commission of murder. So in perjury, subornation of evidence is a crime of a very different complexion from perjur itself. Here then is a distinction never to be removed from the na ture of crimes; the intention alone does not constitute the crime. unless it is carried into execution it cannot amount to the crim which it failed to accomplish. This distinction is also founded i the nature of crimes against the state, which, I observe, are all re ducible to sedition, to treason, and to verbal sedition. Whatev tends to the destruction of the state may be termed sedition; bu there are acts of sedition exalted to treason, ennobled on account c their dangerous consequences, and punished as treason, by attai der, forfeiture, and a rigorous death. Sedition itself, is a popul commotion to the obstruction of law, or the interruption of publ tranquility, not directed, however, against the constitution, nor a mounting to treason. (Thus an insurrection though in arms, t destroy an inclosure, is in England a riot, in Scotland sedition; bu an insurrection to destroy all inclosures constitutes treason.) Bu there is a crime different from this; there is an attempt to excit or to commit sedition; an attempt which, in treason, and in trea son alone, is converted into an overt act, and, on account of its dan gerous consequences, punished by statute, as treason itself. Sta

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crimes, therefore, are either ſedition or the attempt to excite it, or certain actions converted, for the preſervation of the ſtate, into treaſon. I conclude, therefore, both from the nature of crimes in general, and from the diſtinctions eſſential to crimes againſt the ſtate, that an attempt to commit ſedition never can conſtitute actual ſedition.

This diſtinction, and theſe definitions may be variouſly illuſtrated. Nor in a queſtion concernning the ſignification of terms, will your lordſhips reject the aſſiſtance of philology, or of any ſcience that aſcertains their common acceptation, or their proper import. If we reſort then to the acceptation of the word in our own language, ſedition is defined by Johnſon, our greateſt philologiſt "a "tumult, an inſurrection, a popular commotion, an uproar." Here an actual commotion is ſpecified, not that ſeditious attempt, the tendency, or the deſign of which is to excite commotion. If we examine its etymology, ſedition, *ſeorſum itio*, is a ſeparation or ſeceſſion from the body of the people; and in this ſenſe, the ſeceſſion of the Roman people to the Aventine mount, would have been a ſedition, had not the cauſe of the people ultimately triumphed. But the ſpeeches of Sicinius, which produced that ſeceſſion, whatever was their tendency, could never with propriety be denominated ſedition. The ſedition deſcribed by Virgil.

Ac veluti magno in populo cum ſæpe coorta eſt
Scditio, ſævitque animis ignobile vulgus,
Jamque faces et ſaxa volant, furor arma miniſtrat;

the actual commotion deſcribed in this ſimile is very different from that attempt to create ſedition, of which the brutal Appius accuſes the father and the lover of Virginia——"*Certis indiciis compertum ſe habere, nocte tota cœtus in urbe factos ad movendam ſeditionem.* Livy." Convocations were formed in the city, and during the night, but Virginius and Icilius were only accuſed of attempting, by theſe nocturnal convocations, to ſtir up the people to actual ſedition.

My lord, the application of this diſtinction is ſufficient to determine the nature of the crime. If the *corpus delicti* conſiſts in opinions and ſpeeches, or in reſolutions the concurrence of opinions and reſult of ſpeeches, theſe are criminal on account of their tendency to excite ſedition, or diſturbance in the ſtate. The tendency of the offence conſtitutes the guilt; for I maintain, that in themſelves the ſpeeches are not criminal. The reſolutions, if locked up in the breaſt, the ſpeeches, if uttered to the winds of the deſert, the writings, if concealed in our repoſitories from human obſervation, are neither criminal nor obnoxious to puniſhment. In the celebrated caſe of Algernon Sydney, the papers diſcovered in his cabinet, and never promulgated, afforded no legal evidence of treaſon, and would have conſtituted no ſpecies whatever of ſedition. I repeat it therefore, that the ſpeeches are not in themſelves criminal. The man who writes, without attempting to diſſeminate or to publiſh, a ſeditious compoſition, may

remain in the country as an innocent citizen; and, however disaffected in secret to government, will still enjoy the protection of its laws. Your lordships will therefore observe, that it is not the *malus animus* which is punishable, not that mind which is hostile to the state, but the declaration of that hostile disposition *malo animo*, to the effect of exciting disturbance, or with a design to generate similar hostility in the minds of others. The fact itself may be inoffensive; the attempt may be impotent; but the attempt, though frustrated, then becomes criminal when dangerous to society; and its tendency is the circumstance which constitutes the crime.

My lord, the principle which I have thus endeavoured to establish, is fully recognized in the law of England, in which contempts or misprisions against the king or government, offences equivalent to verbal sedition, are punished on account of their tendency alone. "Contempts and misprisions (says Blackstone) against the king's *person* and *government*, may be by speaking or writing against them, cursing or wishing him ill, giving out scandalous stories concerning him, or doing any thing that may *tend* to lessen him in the esteem of his subjects, *may* weaken his government, or *may* raise jealousies between him and his people." Though denied in argument, the principle is acknowledged in the indictment itself. The *corpus delicti* is there stated, as "of the most dangerous and destructive *tendency*, hostile to the peace and happiness of society, and *tending* to subvert the constitution of the realm." In every other indictment for verbal sedition, the same tendency has been uniformly charged.

But, in opposition to the concurrent authority of lawyers, in contradiction to that essential distinction between a crime attempted, and actually committed, sedition, it is said, is a technical epithet, expressive of a variety of distinct crimes, but incapable of a definition to which every seditious offence may be reduced. Sedition is represented as a hydra united below in a common trunk, but disparted above into a thousand heads. Of the seditious it is said,

> Their aims are various, as the paths they take
> In journeying through life.

Nor are their crimes, though obnoxious to legal penalties, reducible to any legal definition or standard.

My answer is this, that the supposed variety, so unsusceptible of definition, proceeds from the creation of various statuory acts of sedition, just as lesser offences are sometimes converted into statutory treasons. Simple convocation, unarmed conventions not tumultuous, bonds and leagues among subjects, are acts of sedition created by statute, and certainly not included in the legal definition affixed to sedition; an actual commotion or insurrection of the people. But at common law, the definition is not the less true, that certain acts not comprehended under it, have been declared by statute tantamount to sedition, and sanctioned by the penalties attached to that crime. In treason, of

which the definition, contrary to what has been formerly aſſerted, is preciſe and explicit, in treaſon, which conſiſts in counteracting, or betraying that allegiance due from the ſubject by birth or reſidence, 'the 'zeal of the legiſlature,' according to Blackſtone, 'has ſometimes de-'parted from this its primitive idea.' To aſſert that the legiſlature cannot limit or alter the ſucceſſion, is a ſtatutory treaſon, not comprehended under its legal definition. But the legal definition is not therefore deſtroyed.

My lord, the authority of Erſkine and of Bayne has been alſo quoted, to prove, that real ſedition is a convocation without authority, tending to diſturb the tranquility of the public. Had the gentleman quoted the preceeding ſentence from Erſkine, that 'ſedition, 'conſiſts in raiſing commotions or diſturbances in the ſtate;' your lordſhip would have perceived from the context 'Such commo-'tions as are directly againſt the ſovereign or the ſtate, amount to 'high treaſon, but where raiſed to redreſs ſome ſuppoſed grievance, 'are properly ſedition,' that the intermediate paſſage, related, not to peaceful and unarmed conventions; but to thoſe irregular and tumultuous convocations, that are always riotous Bayne, whoſe inſtitutions are a brief and imperfect abſtract from M'Kenzies, has obviouſly confounded ſedition at common law with a ſtatutory offence. Popular commotions to the obſtruction of law, or the diſturbance of public peace, were puniſhed at common law; unarmed conventions whatever was their tendency, prohibited by ſtatute. Happily the laws againſt peaceful, unarmed conventions are conſigned to oblivion; but to the definition of real ſedition at common law, Bayne has added a convocation of citizens without authority, and to render it illegal, ſpecifies its *tendency* to diſturb ſociety. If tumultuous, the convocation was illegal at common law, but the ſtatutory crime of convention, to which the definition of ſedition is thus arbitrarily extended, was illegal whatever was its tendency, whether directed to the worſhip of God, or to the obſtruction of public tranquility and juſtice.

Such then, my lord, is the law. I ſhall now proceed to examine, the facts ſpecified in the indictment, whether, and how far they amount to the crime of which my client is accuſed. The firſt is, his acceſſion to an illegal and ſeditious convention; for I will not preſume that a peaceable convention of an innocent tendency, conſtitutes a criminal charge to-day. The illegality of ſuch a convention muſt conſiſt in the objects to which it was directed, its ſeditious nature in the meaſures adopted to attain theſe objects. I ſhall therefore examine, firſt the objects propoſed by the convention, and then the mode in which theſe were purſued.

And here, my lord, I affirm, that annual parliaments and univerſal ſuffrage, the ſole objects propoſed by the convention, are legitimate and conſtitutional objects of purſuit. Theſe are principles recognized in the theory of our conſtitution, nor queſtionable unleſs as expedient in practice. Annual parliaments are confeſſedly a

queſtion of mere expediency, like thoſe of a triennial or ſeptennial duration. They were appointed, and their legitimacy recognized by different ſtatutes, the 3 and 34 of Edward III. and continued, till Richard II. in whoſe unfortunate reign the uſe of long parliaments was firſt introduced. Your lordſhips cannot be ignorant that motions for annual parliaments have been annually renewed in the Houſe of Commons; nor is it neceſſary for me to aſſert the conſtitutional nature of a queſtion, which, in 1745, when agitated in the Houſe of Commons, on the motion of Mr. Carew, was negatived only by a majority of thirty two.

But your lordſhips hitherto have uniformly reprobated univerſal ſuffrage, as an illegal object, repugnant to the principles of our happy conſtitution; productive of anarchy, the ſources of miſery; and, as no people have a right to will their own miſery, it is inferred, that none are entitled to univerſal ſuffrage. Without controverting this logical education, I ſhall argue, not to a political, but to a legal effect, that univerſal ſuffrage is a principle conformable to the ſpirit, and recognized in the theory of our conſtitution, though from motives of expediency, not adopted in practice to its utmoſt extent. What is the object propoſed by univerſal ſuffrage? That freemen, who poſſeſs an independent will, not ſubjugated to the power of another, ſhall enjoy, each his ſuffrage, in the election of thoſe repreſentatives by whoſe acts they are bound, by whom their property is diſpoſed of, and their conduct regulated. Who are excluded in this ſcheme of repreſentation? Idiots, minors, paupers, and criminals, all thoſe who have no will of their own, or what is equivalent, no honeſt or independent will. What then is the theory of repreſentation in the Britiſh conſtitution? That thoſe only ſhall be excluded from voting, whoſe ſituation is ſuch that they cannot be preſumed to have a will of their own. Each proceeds on this common principle that the perſons of freemen, are repreſented, not their property, and each aſpires to this ſublime idea, that the ſyſtem of repreſentation ſhould be eſtabliſhed on a baſis as broad as its ſuperſtructure. The practice of our conſtitution has degenerated, it is true, from its theoretical perfection, whether, as ſome ſuppoſe, from the imperfection natural to the human race, or, as others imagine, from the decay and decriptitude of every human inſtitution. But the principles, my lord, are the ſame. Idiots and criminals are excluded in the ſcheme of univerſal ſuffrage, on the principle that they have no will of their own, and on the ſame preſumption, poverty, in the practice of our conſtitution, is a cauſe of excluſion. Qualifications of property are therefore no principle in our conſtitution, but a teſt of that principle which our conſtitution requires. Inſtead of conſtituting, as has been erroneouſly aſſerted, the right of ſuffrage, they are merely a teſt of that independent ſuffrage, which, by the principles of our conſtitution, is conſidered as the inherent birth-right of every Britiſh freeman.

My lord, this is no new doctrine which I now maintain. It is ſupported by the moſt popular, and let me add, the moſt orthodox

writers on the Engliſh conſtitution. Monteſquieu, in a paſſage, (which as the French may implicate ſedition, I ſhall tranſlate to your lordſhip.) maintains: 'That in England, all the citizens, in 'their different diſtricts, ought to have a right of ſuffrage in the 'choice of their repreſentatives; thoſe only excepted, whoſe ſitua- 'tion is ſo vile, that they muſt be reputed to have no will of their 'own." To the ſame purport Blackſtone informs us, 'As to the 'qualifications of the electors. The true reaſon of requiring any 'qualification, with regard to property in votes, is to exclude 'ſuch perſons as are in ſo mean a ſituation that they are eſteemed 'to have no will of their own. If theſe perſons had votes, they 'would be tempted to diſpoſe of them under ſome undue influence 'or other. This would give a great, an artful, or a wealthy man, 'a larger ſhare in elections than is conſiſtent with general liberty. 'If it were probable, that every man would give his vote freely, 'and without influence of any kind, then, upon the true theory 'and genuine principles of liberty, every member of the commu- 'nity, however poor, ſhould have a vote in electing thoſe dele- 'gates, to whoſe charge is committed the diſpoſal of his property, 'his liberty, and his life. But, ſince that can hardly be expected, 'in perſons of indigent fortunes, or ſuch as are under the immedi- 'ate dominion of others, all popular ſtates have been obliged to e- 'ſtabliſh certain qualifications; whereby ſome, who are ſuſpected 'to have no will of their own, are excluded from voting, in or- 'der to ſet other individuals, whoſe wills may be ſuppoſed inde- 'pendent, more thoroughly upon a level with each other. This,' he continues, 'is the ſpirit of our conſtitution: not that I aſſert it 'is in fact quite ſo perfect as I have endeavoured to deſcribe it; 'for, if any alteration might be wiſhed or ſuggeſted in the preſent 'frame of parliaments, it ſhould be in favour of a more complete 'repreſentation of the people.'

Here, my lord, univerſal ſuffrage is repreſented by Blackſtone as congenial to freedom, and the ſpirit of our conſtitution, qualifications, as the teſt of an independent ſuffrage. But why this teſt? Not that an univerſal equality of ſuffrage is productive of anarchy, anarchy of miſery; but without ſuch teſt, that the opulent would arrogate an undue influence inconſiſtent with liberty. The teſt is juſtified, not as preclufive of a dangerous equality, but becauſe it reſtores, to thoſe that are independent, their equality of ſuffrage. The queſtion which Blackſtone has thus determined, is decided differently by a judge in India. Sir William Jones has aſſerted the expediency, as well as the right of univerſal ſuffrage, nor is that accompliſhed, and celebrated ſcholar ſingular in a queſtion agitated ſo variouſly by the ableſt politicians. While the princi- ple has ever been acknowledged in theory, the expediency of uni- verſal ſuffrage has been determined, in the negative by Mr. Fox, in the affirmative publickly, in reſolutions iſſued from ſuch a con- vention as the preſent, by his oponent Mr. Pitt.

But to what purpose do I quote these passages, or appeal to the authority of these distinguished names? To demonstrate to your lordships, that universal suffrage and annual parliaments, the professed object of the British Convention, are legitimate and constitutional objects of pursuit. It is to convince your lordships that these objects are strictly constitutional, and acknowledged in theory; and that their expediency in practice is the only question. But, my lord, this is a question to be debated between man and man, a question fit for discussion in the House of Commons, not for the cognizance of a court of law. It is a question on which the wisest and the greatest have differed, but let it not be told in England, that universal suffrage, a principle essential in the theory of its constitution, has been arraigned as seditious, and proscribed as unconstitutional, in a Scottish Court.

Such then, my lord, were the professed principles, and such the ostensible objects of the British Convention. It remains to examine the mode proposed, or the measures adopted, to accomplish these legal constitutional objects; but in the speeches and resolutions, charged as seditious in this indictment, what is there to indicate that the secret motives of the convention were different, that its designs were criminal, or as the public prosecutor has hardly asserted, that *a plan was deliberately formed to subvert the constitution?* I shall examine, my lord, as concisely as possible, the resolutions and speeches contained in the indictment.

The first is a speech extracted from the Gazetteer, and ascribed to Mr. Gerrald, in the British Convention. My lord, I affirm that this speech is legal and constitutional throughout, and perfectly conformable to the professed object of that association. It begins by stating, that after the union of the crowns, on the accession of James to the throne of England, 'the people of both countries, were deprived of 'some of their most valuable privileges.' And who will deny, that during the sanguinary reign of the Stuarts, the most dangerous encroachments were made on our liberties? Who will maintain that the privileges of the people were not then invaded; privileges which, in some instances, the revolution has not entirely restored? But the speech proceeds to establish universal suffrage, not only as our birthright by nature, but as a right actually enjoyed under the Saxon government, and exercised from the Norman Conquest or Robbery, (a robbery, my lord, it undoubtedly was) abridged the inheritance of our Saxon ancestors. To restore this natural right, to recover this inherent principle, as it is termed, of our constitution, it proposes the most peaceable and legal means, that the people should be instructed in its importance, and persuaded to solicit its restitution by petitions to parliament. My lord, this is not the language of sedition, but an assertion of our unalienable right to petition either branch of the legislature. But there are passages supposed to indicate a different intention. The petitions were to be subscribed by a majority of the people, 'by a number so respectable as to *command* attention; and

'it will ſoon have that reſpectability, if we have reaſon on our ſide.' On this invidious conſtruction, my brother and my friend has ſufficiently commented. Were *command* (than which I know not a happier phraſe) expreſſive of a compulſive force to overawe the legiſlature, its correlative would be *obey*; but here the attention which truth and numbers may be figuratively ſaid to command or enforce, and which certainly they ſtrongly ſolicit, is *yielded* by parliament, whoſe attention cannot be ſaid to *obey*.

The next article of the indictment diſcloſes the grand arcana of ſedition; the reſolution aſcribed to the convention of reſiſting the authority of the legiſlature, concerning which I ſhall firſt examine its import, and then its criminal amount and complexion. I muſt premiſe, however, that in a caſe like the preſent, wherever a declaration is equally ſuſceptible of two conſtructions, that which is innocent is to be received as its genuine interpretation and ſenſe. Your lordſhips may remember the trial of Lord Strafford. An accuſatian againſt him was, that he ſaid in the public hall at York 'that the lit-'tle finger of prerogative ſhould lie heavier upon them than the loins 'of the law.' By inverting the expreſſion thus, that 'the little fin-'ger of the law was heavier than the loins of prerogative,' he fairly explained it away. The Commons perſiſted in this accuſation; but their illiberal conſtruction of a ſentence ſuſceptible of a different meaning, has been reprobated by every hiſtorian as oppreſſive and illegal. If words, therefore can abmit of two conſtructions, that which is moſt favourable to innocence muſt always be adopted.

My lord, to proceed to the reſolution, the firſt part of it ſtates, in general, That 'if any unconſtitutional act be propoſed in parliament, 'inconſiſtent with, or ſubverſive of, our known conſtitutional liber-'ties, we declare, before God and the world, that we ſhall follow 'the wholeſome example of former times, by paying no regard to any 'act which ſhall militate againſt the conſtitution of the country; and 'ſhall continue to aſſemble, and conſider of the beſt means by which 'we can accompliſh a real repreſentation of the people, and annual 'election, until compelled to deſiſt by ſuperior force.' What is the import, then, of following 'the wholeſome example of former times?' They meant, it is ſaid, to fly in the face of all conſtituted authority, and to reſiſt the government. But is this the wholeſome example of former times? No, this is not the caſe; for the expreſſion is immediately explained by the context, 'by paying no regard to any act 'which'—ſhall do what? 'Which ſhall militate againſt the conſtitu-'tion of this country;' and how 'diſregard it? Not by active and forcible reſiſtance; but with all the reſignation of a quaker; by that paſſive reſiſtance which a quaker would ſhew, were he to enter the Court, and remain with his head covered, till your lordſhips macer ſhould take off his hat. He ſubmits paſſively to the laws of his country, when exerted, to which, at the ſame time, he pays no previous regard. But the reſolution amounts to this, that the members aſſociated, or delegated, to obtain univerſal ſuffrage and annual parlia-

ments, on the first notice of a bill to suppress their convention and to frustrate these their constitutional objects, shall assemble immediately, nor depart till the law, in the event of its being enacted, shall receive its full operation on them. They assemble on the first notice of the bill, for this obvious reason, that no meeting could take place when it passed into a law. They assemble to depreciate, and, by every legal endeavour, to prevent its passing. But they will continue to assemble till compelled to desist by superior force. To discover the criminal nature of this passive resistance, of this resolution to obey upon compulsion only, let us suppose, for a moment, that an act obviously unconstitutional were adopted by legislature; that monarchy, no matter how improbable, were abrogated forever, what would be the conduct of every peaceable citizen interested in its support? I would appeal to your lordships, sworn as you are to abide by monarchy, that you would resist, passively at least, though not perhaps forcibly, that act which you thought unconstitutional, and continue to meet in Court, by regal authority, 'till compelled to desist by superior force.' Such would undoubtedly be your lordship's conduct, and such is the precise conduct which the convention observed. Their ideas of resistance, their resolution not to desist till compelled by superior force, are explained, and the extent of both ascertained, by the compulsion in consequence of which they desisted, and the force by which they were actually dispersed. Their resolution was not *to resist*; it was *to desist* till compelled by force; and when my friend Mr. Davidson, the sheriff, laid hold of the president's arm, to remove him from the chair, 'No, Sir,' says the president, 'this is not force enough; a lit-'tle more if you please;' accordingly the sheriff, by a very gentle exertion, removed him from the chair. The whole was a scenic exhibition; and truly, my lord, where the force was so ludicrous, a resolution not to desist till such force was exerted, can never be criminal.

My lord, the resolution proceeds, 'and in case of an invasion to 'reassemble in convention.' The construction imposed upon this is, that the convention meant to join, or assist the invaders. My explanation is very different, that it was the intention of the members, by every effort in their power, to resist an invasion. The resolution concludes thus, 'that all, or any one of these calamitous 'circumstances,' (and an invasion is one of the preceding circumstances,) 'shall be a signal for the members to meet in convention.' But why calamitous, if they did not consider it really as such? If they did not mean to avert that calamity, why represent it to the people or to themselves, as a most calamitous circumstance? Can any thing more explicitly point out their intention? Or when the whole resolution is considered, can your lordships impose any other construction than this upon it, that the intention of the members was, by every exertion, to avert that which they justly represented as a national calamity.

Now, my lord, having determined the sense and import, let us

xamine the criminal amount of a reſolution conſidered as ſo alarm-
ng and dangerous, that the conſtitution, in the opinion of ſome
iſe men, totters already to its very foundation. A refuſal to yield
n implicit, uncompelled obedience, to an act whoſe exiſtence is on-
potential, on the ſuppoſition too of its proving an unconſtituti-
nal act, is charged to-day as a direct attack on the authority of the
giſlature, conſtituting a ſpecies of real and atrocious ſedition. To
npugn the authority of the three eſtates, or to attempt a diminu-
on of their power or dignity, was, by 1584, chap. 130, declared
be treaſon; and the proſecutor maintains an argument ſuſtain-
l by your lordſhips on a former trial, that although the act is ſu-
erſeded by the introduction of the Engliſh ſtatutes reſpecting trea-
n, the offence that ceaſes to be treaſonable, muſt ſtill ſubſiſt as ſe-
tion at common law. My lord, let me explain the origin of this
t, whoſe very abrogation, it ſeems, is productive of a new ſpe-
es of ſedition. It was obtained by James VI. to preſerve the ec-
ſiaſtical eſtate, or rather the epiſcopal power, in parliament, then
danger of being ſubverted by the efforts of our preſbyterian an-
ſtors. The dignity of the eſtates might be variouſly impugned,
violence, by publications and ſpeeches, or by reſolutions in par-
ment. A variety of inferior offences, or of actions in themſelves
different, were therefore converted by this act into treaſon. But
eſe offences, when the act was aboliſhed, were again reſtored to
eir primitive ſtate. Popular commotions directed againſt an e-
te of parliament, would return as formerly to real ſedition;
eeches, or publications, derogatory to either of the three eſtates,
their original ſituation as verbal ſedition. By the act immediately
eceeding this ſtatute, to decline the authority of the counſel was
aſon, but how abſurd to maintain, that becauſe the act is aboliſh-
, the offence, originally a contempt of court, ſubſiſts at common
w as a ſpecies of real, and atrocious ſedition? I conclude, there-
e, that the various offences comprehended in this act, muſt re-
rt to their original ſituation at common law, like him whoſe pa-
nt of nobility is forfeited, and whoſe deſcendants return to the
mmon herd of mankind.

But, my lord, I do not like this act, nor its introduction in this
al. And I will tell you why. The Earl of Argyle was ar-
gned on this ſtatute, and convicted of treaſon becauſe he beſtow-
an explanation of his own on a religious teſt, preſcribed by par-
liment, whoſe authority he thus invaded, and whoſe power he
ipugned. But this conviction diſhonoured the juſtice of the na-
n, and the act itſelf, inſtead of being ſuperſeded by the Engliſh
w, was abrogated previouſly by our Claim of Right, or rather
clared to have been an obſolete and dead ſtatute at the very time
was tried. The Claim of Rights declare, that James VII. had
feited his right to the crown, among other things, 'by cauſing
purſue, and forfault ſeveral perſons upon ſtretches of old and ob-

' ſolete laws, upon frivolous and weak pretences, upon lame ar
' defective probation, as particularly the late Earl of Arguyle, t
' the ſcandal and reproach of the juſtice of the nation.' Thus th
Earl of Arguyle, to the reproach of juſtice, was condemned on th
ſtretch of an obſolete law. But in this enlightened period, the gen
tleman at the bar, more unfortunate even than the Earl of Arguyl
is to be convicted of a crime that has ſurvived this old and obſolet
act; an unknown ſedition that ſprings like a phenix from the em
bers of treaſon. Arguyle was convicted, becauſe he impugned a
exiſting law, but my client is arraigned, becauſe he impugns a
act whoſe exiſtence as yet is entirely potential. But, my lord, th
offences accumulated on the Britiſh Convention, muſt return t
that ſituation which they held before this obſolete ſtatute was en
acted; commotions to real, publications and ſpeeches to verbal ſ
dition.

Not to exhauſt your lordſhips patience, I ſhall obſerve of th
ſpeech that ſucceeds this reſolution, and of the convention of
mergency, that the firſt, by enumerating the reſtraints impoſed b
a Convention Bill on the right of petitioning, coincides exact
with the interpretation beſtowed on the preceding reſolution; th
the convention, by conſtitutional means, would endeavour to pr
vent the introduction of a law to intercept their petitions, and
fruſtrate the ultimate attainment of their objects. As to the othe
it was natural for the convention, in the event of their diſperſion
one country, (which, as their objects were conſtitutional th
muſt have conſidered as illegal,) to provide ſecretly and befor
hand, for re-aſſembling in another, beyond the juriſdiction of t
ſheriff by whom they were diſperſed. School boys, when diſperſ
in one pariſh, will repair privately to the adjoining, where th
may renew their bickerings without moleſtation.

But what is the amount of this, and of every other article co
tained in the indictment. Their French epithets, uſed perh
fooliſhly, their reſolutions, and their ſpeeches indicate, it is fai
deſign to ſubvert the conſtitution or government. The Soli
General undertakes to prove that a plan was formed to ſubv
the conſtitution. Let me tell him, that his evidence will not,
cannot exceed the indictment, that ' the whole form and man
' of their procedure, as well as the principles they avowed
' propagated, clearly, and unequivocally demonſtrate that th
' purpoſes were of the moſt dangerous and deſtructive tender
' hoſtile to the peace and happineſs, and tending to ſubvert
' conſtitution of this realm.' Their principles, and the teno
their procedure is the only evidence from which a plan to ſubv
the conſtitution is inferred. But if ſuch a conſpiracy were for
if ſuch a deſign was entertained, it amounts to treaſon, and ſhoul
tried as ſuch. But a charge of treaſon, let me tell your lord
cannot, and dare not be maintained; not that a concerted de
to ſubvert the conſtitution, is not an overt act tantamount to trea

but becauſe there is no legal proof, nor any evidence whatever, to eſtabliſh that deſign. The teſtimony of two concurrent-witneſſes, whether in treaſon or miſpriſion of treaſon, is eſſential to conviction; but here, I repeat it again, there is no witneſs, and under the preſent indictment none can be adduced, to prove a conſpiracy to ſubvert the ſtate. Sedition therefore is charged to-day, and the crime is to be eſtabliſhed, not by legal evidence, not by the teſtimony requiſite in treaſon, but by inferrences from reſolutions, by inuendos capriciouſly attached to ſpeeches, either innocent in themſelves, or, if criminal, conſtituting a very different offence. A deſign to ſubvert the conſtitution, if ſuſceptible of proof, would amount to treaſon. Speeches and reſolutions are puniſhable only as verbal ſedition, But an intermediate crime, a conſtructive ſpecies of ſedition is created; and from ſpeeches amounting only in themſelves to leaſing-making, a new crime, incapable of proof, and unknown in law, is extorted by inference. The tendency, which alone is criminal in theſe ſpeeches, is not ſubmitted to the conſideration of the jury; but the ſuppoſed motives from which they originated, are to be converted by an arbitrary and capricious inference, an inference neceſſarily influenced by fear, prejudice, and paſſion, into conſtructive ſedition. My lord, I affirm that this is ſubverſive of all judicial procedure. Conſtructive treaſons are now no more; but a crime againſt the ſtate may ſtill, it ſeems, be eſtabliſhed by conſtruction, and that which conſtitutes in itſelf an inferior offence, be rendered the evidence of this conſtructive crime. In the unjuſt, and ever memorable trial of Algernon Sidney, inuendos from his writings compoſed the chief evidence, but Sir John Hawles juſtly remarks, that, 'as this indictment was an original in 'the particulars before mentioned, ſo it was a ſecond of an *inuendo* 'indictment of treaſon; *Fitzharris* was the firſt. The proſecutor 'againſt *Car*, as I remember, was an information, and judgment ar-'reſted after a verdict, becauſe it was by *inuendo*, of which no pre-'cedent could be produced, and although in actions, for words it was 'not permitted, yet in criminal matters, being penal, it was reſol-'ved it ought not to be permitted, and certainly much leſs in trea-'ſon.' In criminal matters, no inuendo is therefore admiſſible, much leſs in treaſon. My lord, our own practice correſponds with this. Oliphant and others accuſed of drinking the pretender's health in public, 'with an intention of abetting his claim to the crown,' were tried and convicted of verbal ſedition. The tendency of their ſpeeches to excite diſturbance conſtituted their ſole offence; but the treaſonable intention inferred from their ſpeeches, of abetting the pretender's claim to the crown, was not then charged as a conſtructive ſpecies of real ſedition.

My lord, an authority occurs on this ſubject, not uſual in a Court of Juſtice, yet ſo oppoſite, that I ſhall quote it without heſitation. It is the Monthly Review for February, wherein a pamphlet is reviewed, the compoſition of a Mr. Playfair, a man whom I know not but who exhorts the nation to wage an eternal war. 'Mr. Play'

asserts that 'it is only a matter of regret, that those who undermine 'our government cannot be treated *a la Francoise*, since it is the 'French system that they have taken for their model.' What say the reviewers to this humane proposal? Their honest indignation breaks forth in a stream of argument and eloquence: 'A powerful 'stream of the milk of human kindness flows through this sentiment 'of regret that the guilotine cannot be set to work in this country, 'on those who do—what? Betray their country? No; for they 'are already liable to the penalties of treason, and to a death infi-'nitely more painful than that which is produced by the guilotine. 'Who adhere to the king's enemies? No; for they are in the same 'predicament. Who by overt acts attempt to overturn our govern-'ment? No; for that also is treason. *Whose* heads then are those 'which the national razor should shave in England, if the *pious* 'wish of Mr. Playfair could have effect? The heads of those who '*undermine* our government: an expression not known in our law, 'and of course not to be found in the index of the criminal code.'

Had these reviewers directed their eyes to Scotland, they would have seen, that, *to undermine the government*, though, under that denomination, unknown in law, nor to be found in the index of our criminal code, is created by implication a crime against the state. They would see that the most iniquitous attainders of former times, might have been converted into a capital, though inferior crime. Sidney and Strafford were both convicted, though at different periods, of constructive treason. But Sidney, though unjustly attained, might have been condemned for sedition, on those inuendos derived from his writings, which in treason were not admissible as legal evidence. Strafford too, if his sentence was iniquitous, might have been legally convicted of constructive sedition; and if this crime has a legal existence, these men might have perished unlamented on the scaffold. Strafford was accused, and on constructive evidence, of *an endeavour to subvert the fundamental laws;* a crime on which the statute of treasons was totally silent. Arbitrarily to introduce it into the fatal catalogue was, in itself, according to historians, a subversion of all law. But wherein does this differ from the charge against my client of a design to subvert the constitution and government? Where has this law lain so long concealed, that it now bursts forth to the destruction of this innocent man? Where is the precedent for this unknown law, or the landmark by which he could discover its existence? It is sufficient for his protection, or for our security, that this new crime of subverting government is prosecuted, not as treason, but sedition? Or is this new law less a snare to the unwary, because the capital punishment attached to sedition, may be restricted by the humanity of Court, to whatever arbitrary punishment the Court may impose? Must he suffer for a crime that had no existence before, by a law created for the occasion, that may burst at last on our own heads, and involve us in its ruins? My lord, let speeches, if criminal, be punished as such; but let not a construc-

ive ſpecies of guilt be deduced by inference from theſe ſpeeches, nor a crime eſtabliſhed that is unknown in law.

Theſe ſpeeches, if criminal, are comprehended, as my brother has already demonſtrated, under the acts 1584, chap. 134, and 1585, chap. 10, on which I maintain, as my ſecond propoſition, that where the offence is provided for by ſtatute, a ſeverer or a different puniſhment cannot be inflicted at common law. To eſtabliſh this propoſition will not require any long deduction. Nor would I condeſcend to an argument on a propoſition almoſt intuitive, but for an opinion delivered on a former trial, that where the indictment is founded, and ſedition charged, on the common law, the Court are precluded from reſorting to ſtatutes. My lord, the common law is a collection of uſages, the origin of which is uncertain, but of which the exiſtence is preſerved by tradition. The ſtatute, is a ſuperaddition to the common law; *declaratory* either of its meaning, or *remedial* of its imperfections. If declaratory, it aſcertains preciſely what the common law is; nor can your lordſhip, in your interpretations of the common law, travel beyond the limits preſcribed by ſtatute. Again, if remedial, it either *enlarges* and ſupplies the deficiencies, or corrects the luxuriance, by retrenching the ſuperfluous exceſs of the common law. Remedial ſtatutes are therefore again divided into the law of England, into ſtatutes enlarging and reſtraining the common law. As an *enlarging* ſtatute inflicts a greater penalty than was otherwiſe competent, the crime, as in ſtealing from bleachfields, and other ſtatutory thefts, may, from motives of humanity, be charged at common law, to the effect of inflicting the inferior puniſhment. Thus, in England, as a miſpriſion is contained in every felony, it is held that the indictment may proceed on the leſſer offence. But a *reſtraining* ſtatute limits the penalty formerly competent; nor can a ſeverer puniſhment be inflicted at common law, than that to which the reſtraining act has already reduced it. A different puniſhment cannot even be inflicted; for the judge, whoſe hands are thus tied up, has no power to deviate from the ſtatute. Otherwiſe the conſequences would be moſt dangerous; the effect of the ſtatute would be entirely fruſtrated; the law would depend on the paſſions, the caprice, or the intereſt of the man who proſecutes, the puniſhment on the diſcretion of the judge who pronounces the ſentence.

But the puniſhment, as regulated by 1703, chap. 4, is fining, impriſonment, or baniſhment, meaning thereby baniſhment forth of the realm alone. This is the third propoſition, which I propoſed to illuſtrate. The argument maintained for the crown is this, that baniſhment by the mode of tranſportation is prohibited neither by the ſpirit nor the letter of the act; that the ſpirit, as expreſſed in the preamble, meant only to abrogate confiſcation and capital puniſhments, the letter to ſpecify the moſt uſual arbitrary puniſhments as then underſtood; and it is aſked with an air of triumph, who will ſay that, by baniſhment the Court was limited to

the inferior of two modes of puniſhment comprehended under that generic term?

My lord, the ſtatute itſelf ſhall refutes this argument. The preamble recites, that from their generality, and the various conſtructions of which they are ſuſceptible, the laws againſt leaſing-making, (which are previouſly enumerated) as inferring death and confiſcation, may be of dangerous conſequences, and the enacting clauſe proceeds accordingly to abrogate the puniſhments of confiſcation and death. So far the ſuppoſed ſpirit, and the letter are conſiſtent. But the enacting clauſe goes farther, not merely to ſpecify the arbitrary puniſhments uſually employed, but as a reſtraining ſtatute, to limit theſe to an alternative penalty, to baniſhment, or impriſonment, or a fine, or on the inability of the party to diſcharge a fine, to a corporal puniſhment mitigated, and expreſsly limited to the preſervation of life and limb. Your lordſhips will therefore obſerve, that the ſtatute extends farther than the ſuppoſed ſpirit aſcribed to the preamble. A fine may be inflicted, baniſhment may be inflicted, or impriſonment inflicted; but theſe penalties cannot be accumulated, nor corporal puniſhment ſuperadded to baniſhment, or indeed inflicted, unleſs on the alternative of the party being poor and unable to pay a fine. The ſpirit therefore, aſcribed to the preamble is contradicted by the letter of this reſtraining ſtatute, reſtrictive even as to that alternative puniſhment with which it entruſts your lordſhips. The queſtion therefore is, what is the meaning of the term baniſhment in the act of Queen Anne?

And on this queſtion, the argument from the act 1609, ſo fully illuſtrated by my brother, is to me deciſive. I hold, that the baniſhment preſcribed by that ſtatute is from Scotland alone; as tranſportation, a puniſhment unknown when it paſſed, was not then in the contemplation of the legiſlature. This ſtatute is the laſt enumerated in the act of Queen Anne, wherein the epithet baniſhment occurs but once. Were tranſportation therefore, as implied in the generic epithet, to be inflicted under the other acts againſt leaſing-making, then, this abſurdity would take place, that baniſhment, though employed but once, has a double ſignification in the act of Queen Anne. If applied to 1609, it imports no more than excluſion from Scotland; but when applied to the other ſtatutes which the ſame acts enumerates, it implies not only a ſecluſion from Scotland, but baniſhment beyond ſeas, tranſportation to the plantations, loſs of liberty, and perſonal ſervitude. Corporal puniſhments are limited to the alternative of the party being unable to pay a fine: yet this greateſt and moſt ignominious of corporal puniſhments is entruſted to your lordſhips as a mode of baniſhment. But, my lord, were baniſhment, as employed in the act of Queen Anne, an expreſſion either diſputable or doubtful, its preciſe import is thus aſcertained. When the act 1609 was in the ſpecial contemplation, and underwent the reviſion of parliament, that ſignification which

implied, or that punishment which was prescribed, in banishment, must *in dubio* be presumed to have been affixed to the same word, when employed by parliament in the act of Queen Anne. If banishment, by the act 1609, be simple exile, or exclusion from the realm, there is no reason to suppose that it acquired the additional sense of transportation beyond seas, when that statute was revised by the act of Queen Anne.

To this argument, my lord, I have heard no answer, and I hold it decisive. But the act against wrongous imprisonment, and another of Charles II. inflicting banishment to the plantations on those who refused to depone against delinquents, have been preposterously quoted. The first, by banishing to the plantations, demonstrates, the solicitude of parliament to distinguish transportation, a punishment recently introduced, from simple banishment as understood at common law; in the other, an act against wrongous transportation, as well as wrongous imprisonment, the expression banishment is not once introduced.

But, my lord, if transportation, which I hold to be a punishment superadded to banishment, be a mode of banishment comprehended under that generic term, if under a statute, sanctioned merely by banishment, your lordships are intitled to inflict transportation; then, under a sentence of your lordships inflicting banishment, those to whom the execution of the laws is entrusted, would be entitled, equally with your lordships, to transport to the plantations the man whom your sentence has merely banished. My lord, the consequence follows inevitably from the argument, and my client, banished to-day by your lordships, may be transported to-morrow by the executive power.

But a case from the records of the Privy Council has been quoted as decisive. Baillie, a few months after the act of Queen Anne, was convicted of leasing-making, and condemned by the Privy Council, to be banished and transported, placed in the pillory, and adjudged infamous. I mean not to impugn the authority of a court of law, when I assert that this sentence was most unjust and illegal. The Privy Council was necessarily arbitrary, uniting the executive power to its judicial authority. The trials in that court were without jury, and the sentence was pronounced when the party was withdrawn. But a more illegal sentence than the one proposed to your lordships as a precedent, cannot be conceived. In every article it violates the act of Queen Anne. Banishment, or imprisonment, could only be inflicted alternatively, and corporal punishment, in the particular alternative of the party being poor and unable to pay a fine! But a gentleman certainly not too poor to discharge his fine, is declared infamous, a punishment which the statute has not authorized, and condemned to the pillory, a corporal punishment replete with infamy. Transportation, infamy, and the pillory are all accumulated on his unhappy head; and as if to refute the plea that transportation was an alternative mode of banishment, he is first banished from the kingdom, and then ordained to be transf-

ported to the plantations. But inſtead of the illegal ſentence of a court aboliſhed as oppreſſive and tyrannical, if your lordſhips regards the juſt and lenient deciſions of your predeceſſors, what is the concluſion? That the ſpirit of the ſtatute, as interpreted twelve years after its enactment, is mild and equitable, when offences not leſs henious than thoſe in the indictment, committed too on the eve of rebellion, were ſo mercifully puniſhed.

My lord, a reference has alſo been made to deciſions recited on a former trial, to the effect of proving that in theſe caſes, tranſportation was the mode in which baniſhment, the generic puniſhment, received execution. I obſerved that the ſentences, as in the caſe of Rankin, were preciſely to this effect: 'The court adjudge the pannel 'to *be baniſhed forth* of the realm, and ordain him to return to 'priſon, and to be confined therein till occaſion be had for his *tranſ-* '*portation* to the plantations.' We are told that the laſt part of this ſentence is an explanation, declaratory of the firſt, and confinement, till an opportunity offer for tranſportation, as well as tranſportation itſelf, is interpreted as the *mode* in which baniſhment forth of the realm muſt receive execution. Now my lord, it appears to me that this inference is not logical; for baniſhment forth of one country, never can imply tranſportation to another. My explanation is this; tranſportation to the plantations, as inflicted in the latter part of the ſentence, is ſupplemental, not declaratory; an additional part of the ſentence of baniſhment forth of the realm; not explanatory of its meaning, or of the mode in which it was to be carried into execution. The crimes thus puniſhed by tranſportation are immaterial: they were either capital, and mitigated to leſs than death, or offences of which the puniſhment is arbitrary and without controul; for thus without the intervention of ſtatute, tranſportation was firſt introduced into our law.

With your lordſhips permiſſion, there are yet two circumſtances to which I ſhall advert; the motive or the expediency of the puniſhment which I deprecate, and its diſproportion to the offence. The motive hitherto uniformly aſſigned for tranſportation is, that there is no ſecurity, nor advantage to be obtained, by baniſhing acroſs the Tweed, thoſe who will ſtill diſſeminate their ſedition in England. My lord, has England no laws for her own preſervation, that ſhe muſt be indebted for protection to the ſevere vigilence of a ſiſter kingdom? Is it requiſite that the laws of Scotland ſhould interpoſe to prevent the future repetition of crimes in England? Sedition in Scotland is ſufficiently repreſſed by expulſion from Scotland; but muſt England be ſecured by your ſentence, even from the apprehenſions of ſimilar ſedition? To prevent the future commiſſion of crimes in England, you impoſe a puniſhment which, if the crimes were actually committed, the laws of that country would not authorize, and could not inflict. It is the ſpirit of true puniſhment to prevent the future, by exhibiting a corrective example of the paſt; not by inflicting the penalty previous to the apprehended crime. With us the offence as bailable does not amount to felony: in England it

could not be punished with banishment. Why then inflict a punishment appropriated to felony, as preventive of a crime apprehended in England, a punishment which could not be inflicted in England, were the crime committed?

My lord, on this immense disproportion between the punishment and the offence, let me suggest a distinction which I am too much exhausted to illustrate.—Clarendon was banished, Barrington transported. Clarendon, when exiled by a vicious court and a venal monarch, lived abroad, to himself and to his country, to illustrate the annals of British story. Bollinbroke, though expelled for treason, lived to return, and in a corrupt age, to revive the flame of patriotism in every English breast. Atterbury, though in exile, and under discountenance, closed the honoured remainder of his life with dignity and in peace. But a man whose offence is inferior, whose abilities are equal, and his integrity, I am bold to say, superior to Bollinbroke's, whose genius may distinguish his name, and enrich the literature of his country, depends on your sentence—whether his future life shall be lost to society, himself doomed to a receptacle of vice and misery, and transported to a shore from which apparently there is no return. From the state of his health I must add, that a sentence of transportation is to him, in all human probability, a sentence of death.

Lord Henderland. My lord, the subject of our present consideration is not as to the guilt or the innocence of the pannel at the bar, but as to the relevancy of the libel; and, my lord, I shall be very short in what I have to say. It is certainly necessary to examine every criminal libel that comes before us, for crimes may be charged in a different way; a charge may be relevantly laid in one indictment and not in another; and, my lord, in a crime of this kind, which relates to a society, or convention, the views of which society may change very much, and the views of the members may be very different, men misled by folly, or misguided by faction, may have gone into meetings, into conventions of this kind, not aware of the views which they might have; not aware of the consequences which they might draw from it, may, at last, come to feel the hollow ground upon which they stood, the dangerous footing that they were upon, and the consequence of their guilt might be very various indeed; therefore it becomes me to examine this libel closely.

My lord, the question is, is it relevant or not? that is, do the facts charged in the minor proposition come up to the crime charged in the major proposition; that is all my province, I have nothing more to do with it.

My lord, this libel charges the crime of sedition, and the general import of the minor proposition is, that this person has been guilty, in so far, as he has been an active member in a seditious society; a society, or convention, that is charged in the libel to be seditious. With respect to the logical conclusion, there can-

not be a doubt; for, I think, this propoſition may be fairly aſſumed, that whoever is an active member of a ſeditious ſociety is guilty of ſedition: by active, I mean concurring in thoſe meaſures which render and characterize that ſociety to be a ſeditious one; but I ſhould not be ſatisfied with an indictment laid in that way.

My lord, if an indictment was to charge murder in the major propoſition, and in the minor propoſition it was ſaid to be, inſomuch as he murdered ſuch a man upon ſuch a day, no doubt the concluſion would be logical; but I do not think it would be a fair one; becauſe it is the duty of the public proſecutor to ſpecify the particular circumſtances. If it ſaid he was guilty of murder, in ſo far as he murdered ſuch a man, upon ſuch a day, by running him through the body with a ſword, of which he died in a few days after, that is a proper and a relevant libel. Suppoſe it were to ſay, in ſo far as he thruſt ſuch a perſon through the body with a ſword upon ſuch a day, of which wound he died, that would be a relevant libel; becauſe, although the term murder, or the felonious intent is not repeated, it is, and muſt be the conſtruction of law and common ſenſe, unleſs he be able to ſet up a defence againſt it, and eſtabliſh that it was done by accident, which, to be ſure, would be a relevant defence.

Now, my lord, the capital object in every indictment, is to conſider the facts ſpecified in the minor propoſition, and how far they come up to the general charge in the major propoſition. We have heard a great deal about ſedition, real and verbal; diſtinctions which are taken by ſyſtematic writers for perſpicuity and clearneſs, but the true way to judge of ſedition is to take it from the object before you, that is the fair way; for I can conceive verbal ſedition as criminal, as dangerous as any that can be committed by actions. Suppoſe a man to run into the ſtreets and call out—'To arms! to arms! kingly power 'is uſeleſs; it is cumberſome, it ought to be laid aſide. Parliament 'is venal and corrupt. Let us name a body of our own to aſſume 'the power which they have improperly taken. Rouſe and aſſert 'your rights.' Why, my lord, it may be ſaid this is but words; but ſuppoſe he gets people to follow him, then, to be ſure, if they proceed to overt acts, it would be rebellion, it would be treaſon; but ſuppoſe nobody follows him, is there no criminality? Is there no danger to ſociety? Is there no injury to government if ſuch proceedings are tolerated? Can any man doubt that this would be a ſedition totally different from any thing that I can conceive with reſpect to leaſing-making?

My lord, I hold it perfectly clear, taking that ſyſtematic diſtinction that authors aſſume for their conſcience, that there is a ſedition by words totally different and diſtinct in common ſenſe and reaſon from leaſing-making. My lord, in the ſame way the impugning the authority of parliament, or of any of the ſtates, that is a crime that cannot be ſuffered; as long as parliaments exiſt they muſt be defended againſt it by

the common principles of that government which they have aſſumed : it requires no ſtatute, it requires no uſage, it follows from the nature of the thing, that the impugning of that authority is a crime, and is the crime of ſedition ; and I care not whether it be merely in words, or whether it be followed by actions.

My lord, I lay out of the queſtion the act 1584, which declared it to be puniſhed as treaſon ; but I ſay it is part of the common law, and, as was well expreſſed by the young gentleman who ſpoke on the part of the crown, muſt be part of the common law of every ſtate, of every ſociety, of every government that can exiſt in the world.

My lord, having ſaid ſo much the queſtion then is, whether there is any charge made againſt this ſociety (for I ſhall firſt ſpeak of the ſociety) that amounts to this crime, ſetting at nought or impugning the authority of parliament? If there is, I am ſorry to draw the concluſion, but I muſt draw it logically that this convention was a ſeditious meeting ; and if this pannel which is the ſecond queſtion, ſhall appear to have been active in bringing about any ſuch reſolution, then I muſt hold him to be guilty of ſedition. Now, my lord, I will not run through the whole of the argument, which has been long, and which has been ably and well deſcanted upon on both ſides ; I will ſay particularly ſo upon the part of the pannel ; and, if it had not been on ſo ſerious an occaſion, I ſhould have had great pleaſure in hearing theſe gentlemen diſplay that ingenuity, that ability, and that force of reaſoning which they have diſcovered in this cauſe ; but, my lords, it is one thing to admire, and another to approve. My lord, I ſhould be glad it were in my power to give a fair conſtruction to that part of the indictment which I am now coming to. I think, if in the common ſenſe of mankind it admitted of that conſtruction, I am bound to give it ; but I muſt explain according to the context, according to the nature and the plain ſenſe of the object of the reſolution. Now, gentlemen, the reſolution that I allude to has been under our conſideration before ; you will take it in connection with the motion made by Mr. Callander, which is alſo recited in the indictment ; and then comes this reſolution : ‘ That this convention ‘ conſidering the calamitous conſequences of any act of the legiſlature,’ plainly referring to the Convention Bill which paſſed in Ireland, ‘ which may tend to deprive the whole or any part of the people of ‘ their undoubted right to meet, either by themſelves or by delegation, ‘ to diſcuſs any matter relative to their common intereſt, whether ‘ of a public or a private nature, and holding the ſame to be totally ‘ inconſiſtent with the firſt principles and ſafety of ſociety, and alſo ‘ ſubverſive of our known and acknowledged conſtitutional liberties, ‘ do hereby declare before God and the world, that we ſhall follow ‘ the wholeſome example of former times, by paying no regard to ‘ any act which ſhall militate againſt the conſtitution of our country.’ My lord, with reſpect to the opinion which they may form of this Convention Bill, that is one thing, or that any body may form of it ;

but to declare, by a ſolemn and deliberate reſolution, that they have determined to pay no regard to an act of the legiſlature, but holding in contempt the authority of that legiſlature, I can put no other conſtruction upon it; if the gentlemen of the jury can, they are at liberty to do it. I am ſorry I am obliged to anticipate what may be the effect of their deliberation, but there is no help for it; I muſt give my own opinion in this caſe upon the charges before me, and I cannot after all the attention that I have given it put any other conſtruction upon it, than that it was a ſeditious act, a ſeditious, deliberate declaration, to be held up by them to all their adherents, that an act of the legiſlature of this kingdom was to be ſet at nought.

Gentlemen, as to the particular activity of this pannel at the bar, you have his ſpeeches. It may be ſaid that a ſpeech againſt the Convention Bill in Ireland is not ſedition in this country, becauſe Ireland is a foreign country; but you are to take what he ſays, with reſpect to that bill, in connection with the reſolution which he means to ſupport; and you are to take into your conſideration what he ſays in another part of his ſpeech: 'When I ſaw the calm, deliberate coun-'tenances of all preſent, and the ſolemn manner in which it was 'paſſed, I was convinced that it would not only be a reſolution of 'words, but a rule of action.' This, at leaſt, to puſh it no further, ſhews his conduct and his activity in this reſolution, which I muſt, in ſound conſtruction of common ſenſe, conſider as ſedition.

Gentlemen, I will not run over the different proceedings of this convention;—they divided themſelves into ſections, departments, and ſo on.—They alſo had ſittings, committees of organization, inſtruction, and finance; and, taking thoſe into conſideration, I am at a loſs to find out the neceſſity of ſuch a form of governnment, if they only intended to petition parliament.

My lords, that reſolution is againſt the common law of the country, and it is expreſſly againſt the ſtatute 1584; and what ſhews the difference between that and leaſing-making is this, that in the very ſame parliament, or the next, there is an act about leaſing-making; and what occaſion could there be for that act if they were not different the one from the other? I have heard it ſaid by an honourable and ingenious gentleman who has argued this caſe, that this act was aboliſhed at the Revolution, becauſe the Earl of Arguyle's trial, which perhaps in part proceeded upon theſe acts, was ſaid to proceed upon old and obſolete laws. It does not proceed upon old and obſolete laws. Now, gentlemen, you all ſee how far this was aboliſhed; one of the firſt acts of the Convention Parliament is to make it high treaſon to impugn the authority of the Convention of Eſtates; but do they ſay that this neceſſary defence of the conſtitution, which renders the impugning the authority of parliament a crime at common law was to be left out? No; they knew better. They knew that government muſt be ſupported; and had a convention met at that time, and told this convention of the eſtates, 'You have no power to make ſuch a

' law, we will reſiſt your authority,' they might have been tried, under that ſtatute, for endeavouring to reſiſt their authority. And in Queen Anne's firſt parliament, within four acts of the act 1703, of which we have heard ſo much, is juſt the ſame thing as was done in the convention parliament: ' Our ſoveraine lady, the queen's maje-' ſtie, with advice and conſent of the eſtates of the kingdom preſent-' ly aſſembled in parliament, enacts, ſtatutes, and declares, that the ' meeting of parliament now convened," &c. ' is a lawful and free ' meeting of parliament, for the ends therein mentioned. And far-' der, in purſuance of the firſt act of the firſt ſeſſion of this parlia-' ment, and without any derogation thereto, it is declared, that it ' ſhall be high treaſon for any perſon to diſown, quarrel, or impugn ' the dignity of this preſent meeting of parliament, upon any pre-tence whatſoever.' And in 1703, it is ſtill ſtronger in the ' act ra-' tifying the turning the meeting of the eſtates in the year 1689 in-' to a parliament. Our ſoveraine lady, with advice and conſent of ' the eſtates of parliament, ratifies, approves, and perpetually con-' firms, the firſt act of King William and Queen Marie's parliament, ' dated the 5th June 1689, entitled an act declaring the meeting ' of the eſtates to be a parliament, and of new enacts and declares, ' that the three eſtates then met together, the ſaid 5th of June, ' 1689, conſiſting of noblemen, barrons, and burrows, were a la w-' ful and free parliament: And it declared, that it ſhall be high ' treaſon for any perſon to diſown, quarrel, or impugn the dignity ' and authority of the ſaid parliament. And farder, the queen's ma-' jeſtie, with conſent foreſaid, ſtatutes and declares, that it ſhall be ' high treaſon in any of the ſubjects of this kingdom to quarrel, im-' pugn, or endeavour, by writing malicious and adviſed ſpeaking, or ' other open act or deed, to alter or innovate the Claim of Right, ' or any article thereof.' This is the very act immediately pre-ceding that againſt leaſing-makers; and when I ſee theſe principles of juſt government prevail among our anceſtors, ſhall I believe that the impugning the authority of parliament, the dignity of parliament, and its authority, ſhould be puniſhed as ſimple ſedition? Why, it is impoſſible for me to believe it when I read this act.—It cannot fall under the leaſing-making ſtatutes; it is quite a different thing.—It is arranged in the law books under the head of treaſon, but ſtill it was ſedition before, puniſhable from the nature of the thing at common law; and if it is not high treaſon in England, it remains ſedition in Scotland, and puniſhable at common law as ſuch.

I do not mean to enter into any argument upon the ſubject of tranſportation; but I have a ſtrong ſuſpicion in my own mind, from various parts of Sir George Mackenzie, that he does not ſo much as mention the word tranſportation in all his book, though long after the practice of tranſportation had come in; and I do not ſay any thing upon this occaſion that is not ſound. The crime here charged is not leaſing-making, it is ſedition, in the proper ſenſe of the word, ſedition at common law. I will not compare the conſti-

tution of this country to that of England, becauſe I am unacquainte with it. I am not ſufficiently acquainted with their manners, thei genius, their temper ; but if we are not entitled to puniſh, at com mon law, the crime of ſedition, I know not what we are entitled t puniſh. The crime may not apply to the pannel ; he may be able t ſtate a defence to take it off, or prove circumſtances that may ſatisfy a jury. It is the province of the jury to judge of the intent, and every circumſtance relating to it ; and it is my duty to declare, that it is my opinion, that this man ought to be committed to the knowledge of an aſſize.—I have examined this matter with great care, and with anxious care, that I might not do injuſtice to him on the one hand, and, on the other, that I might do my duty. Upon the whole, I think it was ſuch an intention to reſiſt the legiſlature of the country, and to bring its power in queſtion, that, in my opinion, I cannot but commit this libel to the knowledge of an aſſize, in order for them to judge of its criminality ; and I am ſure they will act with the ſame candor, and take the ſame pains that I have done.

Lord Eſkgrove. My lord, the ſubject of our conſideration is not whether this pannel is guilty or not, but as no man, by the laws of this country, is put upon his trial before a jury, till the Court have given their opinion that the facts charged will make out the crime laid, it is our buſineſs to conſider whether the facts charged in the minor propoſition do, if proved, amount to the length of ſhewing that this perſon, accuſed, has committed the crime of ſedition. My lord, I have no difficulty in giving my opinion, that the major propoſition is relevantly laid.—It is uſual and proper for the proſecutor to ſet forth particularly the different facts, from which he infers the actual commiſſion of a crime, or the intention with which theſe facts have been committed. It is here ſtated, that there was a felonious ſeditious intention, and that ſuch and ſuch circumſtances occurred, from which that intention is inferred. It is ſtated, that there was an illegal aſſociation and meeting, which aſſumed the name of ' The Britiſh Convention of the Dele- ' gates of the People, aſſociated to obtain Univerſal Suffrage and An- ' nual Parliaments.'—And my lord, it ſays, that they ' did, in the ' whole form and manner of their procedure, as well as in the prin- ' ciples they avowed and propagated, clearly and unequivocally de- ' monſtrate, that their purpoſes were of the moſt dangerous and de- ' ſtructive tendency, hoſtile to the peace and happineſs, and tending ' to ſubvert the conſtitution.' That is undoubtedly a relevant charge, if the proſecutor can prove it. Then it goes on to ſtate, that they imitated ' the Convention of France, the public avowed enemies of ' this country, with whom Great Britain then was, and ſtill is at war.' My lord, I agree with what one gentleman ſaid, that the uſe of French words and French terms in this manner, might at one time appear merely as ſigns of folly, and at another it might appear to admit of another conſtruction ; but if you attend to it you will obſerve it is imitating a body of men with whom we are at war, and who

ave rendered themſelves objects of horror throughout all Europe. would be glad to know what could be the meaning of having pri- ary aſſemblies, departments, and ſo on, unleſs they meant to form ſort of legiſlative body among themſelves; and to what end their eliberations were to be applied, we are to judge upon the ſubſequent acts in this indictment, and upon them alone; namely, the reſolu- ion which they took, and the plan which they were purſuing. they vere endeavouring to obtain univerſal ſuffrage and annual parlia- nents. My lord, as to univerſal ſuffrage, ſo far as I know, I never eard that it had obtained in the Britiſh Conſtitution, or that it can btain without overthrowing the conſtitution; and therefore, though t may be lawful to obtain a change, yet if it is a change of that ſort, t goes to ſhew that it was not their intention to improve the conſti- ution, but to ſubvert and overthrow it; for it is that which I never eard obtained in the conſtitution at the happy æra of the Revolu- on. My lord, they thought it neceſſary that they ſhould have a onvention;—a pretty thing in this country—a convention; not a onvention of men coming together merely, but they were the re- reſentatives elected by others; and, my lord, this is thought ſo im- ortant a matter, that they are afraid of any thing happening to pre- ent their meetings, and therefore here follows, in this libel, a re- olution, that if an act ſhould paſs to prevent meetings of conven- ions they were determined to reſiſt it. My lord, the libel ſets forth his reſolution:

'That this convention, conſidering the calamitous conſequences of any act of the legiſlature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themſelves or by delegation, to diſcuſs any matter, relative to their common intereſt, whether of a public or private nature, and hold- ing the ſame to be totally inconſiſtent with the firſt principles and ſafety of ſociety, and alſo ſubverſive of our known and acknowledg- ed conſtitutional liberties, do hereby declare, before God and the world, that we ſhall follow the wholeſome example of former times, by paying no regard to any act which ſhall militate againſt the con- ſtitution of our country; and ſhall continue to aſſemble, and conſi- der of the beſt means by which we can accompliſh a real repreſen- tation of the people, and annual election, until compelled to deſiſt by ſuperior force.'

Now, my lord, this determination, if words are plain, is a reſolu- tion not to diſobey a law already made, but to diſobey a law which they expected to paſs when it ſhould paſs; and when there is any notice given of it, then there is to be a ſecret convention aſſembled; that ſecret convention to declare their ſittings permanent, after the manner of the French Convention, and they are to continue to ſit till they are compelled to deſiſt by ſuperior force. And, in the twelfth page of the libel, it is ſtated that this pannel, at the end of a long ſpeech, immediately after this reſolution, told them, 'and though by ſome it may be thought a bold, by ſome a daring meaſure, yet

'it will be found the beſt for ſecuring the peace of our country; for, 'if ſuch a law were ſuffered to paſs, if men were not allowed to 'utter their complaints, a number of fierce and rancorous paſſions 'would ariſe, and we would ſeek to appeal to that laſt terrible de- 'ciſion, the event of which is uncertain, but which God and nature 'allows.

'If the ſervility of the people had been leſs; if they had dared 'to meet, and, in place of murmuring, to have told their rulers 'that there was danger in ſeeking to deprive them of their liber- 'ties, we would not have to adopt this reſolution to-night; but, 'when I ſaw the calm deliberate countenances of all preſent, 'and the ſolemn manner in which it was paſſed, I was convinc- 'ed that it would not only be a reſolution of words, but a rule of 'action.'

My lord, I muſt confeſs that I can put but one conſtruction upon theſe words; that they meant to appeal to the terrible deciſion of the ſword. My lord, I ſhall add no more upon the general relevancy of this charge; I am clearly of opinion that this is ſedition, and ſedition of the moſt aggravated nature. My lord, much has been ſaid of real ſedition and verbal ſedition; ſome gentlemen ſeem to think that there can be no ſuch thing as real ſedition, for that it would amount to treaſon. But, my lord, ſuppoſing a man to have wrote a paper ſaying, I propoſe you ſhall meet in convention, and you ſhall have primary aſſemblies, and ſhall reſolve to reſiſt any law that may paſs to diſperſe them, why, that would be exciting ſedition but here is a body of men actually met together, a combination and conſpiracy of a hundred, or a hundred and fifty people, in the form of a convention of delegates, reſolving to reſiſt the government eſtabliſhed by law.

My lord, I am clearly of opinion, that that ſpecies of offence, call it ſedition or what you will, I call it the greateſt of all ſedition, would have been puniſhable by the acts of parliament already ſpoken to by my brother; and I have no doubt that this reſolution to oppoſe the authority of the legiſlature, to prevent them from making laws, or diſobeying thoſe laws when made, is a reſolution and a conduct that would have been puniſhable capitally in former times, and is puniſhable independent of all the acts regarding leaſing-making, or what I call calumny of the king and his miniſters. But, my lord, it is not only this reſolution that I call ſedition, but there is another thing, your lordſhip will obſerve what is ſaid in one of the ſpeeches of this gentleman, ſet forth in this libel. 'Let us 'then endeavour to inſtruct the people in their rights, and to in- 'form them of our views and our intentions.' Your lordſhip ſees they were to inſtruct the people, and teach them their principles, to inform the country of what their principles and doctrines were, ſo that, if their principles were bad, leaſing making is a much inferior ſpecies of offence than this.

In the laſt place, as to what your lordſhip may propoſe (if the libel be proven) as a puniſhment, your lordſhips have given your opinions on a former occaſion, that there is no law reſtraining you from inflicting baniſhment by the mode of tranſportation. If I had had any difficulty before, I own, an authority quoted this day by Mr. Solicitor General would at once have done away every heſitation upon the ſubject. Your lordſhip heard the authority of a judgment of the privy council, which was read upon a libel, laid upon this very act of parliament, and pronounced by judges who were ſitting (no doubt moſt of them) in parliament at the time that act was paſſed; and therefore, I think there can be no doubt that your lordſhips are authorized to ſentence to baniſhment by tranſportation. One of the gentlemen ſaid, that the act of 1703 made it an alternative puniſhment, either baniſhment, fine, or impriſonment; but, my lord, the men who drank the pretender's health were condemned to fine, to impriſonment, and alſo the diſqualifications of office, and therefore it was by no means confined to any one of them. I am of opinion, in this caſe, that your lordſhip ſhould find the libel relevant to infer the pains of law which is reſtricted to an arbitrary puniſhment.

Lord Swinton. My lord, the queſtion now under the conſideration of this court is as to the relevancy of this libel. My lords, in the ſhort time that I have ſat here as judge, three of theſe caſes have occurred; Muir, Skirving, and Margarot. In each of them I gave my opinion upon the relevancy, as alſo upon the puniſhment, and it is very diſagreeable to go over the ſame ground again, eſpecially when gentlemen of more abilities than myſelf have already done it; for that reaſon I ſhall be exceedingly ſhort, and only go to where I think the eſſence of the crime lies.

My lord, the crime charged in the major propoſition is, in general, ſedition. The facts charged in the minor propoſition amount, in my opinion, to this, to a charge of a ſeditious conſpiracy to overturn the eſtabliſhed government, the happy government of this country, by force and outrage, if it cannot be done otherwiſe. I ſay it amounts to a ſeditious conſpiracy to overturn the conſtitution by force and outrage, if it cannot be done otherwiſe.

My lord, whether theſe facts are relevant to infer the pains of law, needs very little conſideration. My lord, that it is a ſeditious conſpiracy to overturn the conſtitution, one need only read the aim and intention of this Britiſh Convention, as it is called, 'the Britiſh Convention of Delegates of the People, aſſociated to obtain 'Univerſal Suffrage and Annual Parliaments.' The gentlemen who have appeared, and diſplayed ſo much ability for the pannel, have taken a great deal of pains to fritter down what is meant by univerſal ſuffrage. My lords, I maintain that it is not only inconſiſtent with the Britiſh Conſtitution, but inconſiſtent with every

conſtitution or government that ever did exiſt, or ever can exiſt; that every mortal who has arms, and legs, and head, (and we are all equal,—all of like paſſions and like judgments with one another,) that every one of them ſhall have equal ſuffrage. In what? Not only in the election of legiſlators, but of magiſtrates, of miniſters, and of judges too. Univerſal ſuffrage, according to their meaning, is a ſuffrage to rejudge what judges may do; alſo to judge whether they will obey an act of parliament or not, and whether the acts of these annual parliaments are agreeable to their mind or not. I will tell you what,—annual parliaments are inconſiſtent with any government at all; becauſe, if theſe parliaments ſhould paſs an act which theſe univerſal ſuffragants diſliked, they have a right, from nature, to meet and ſay this is a wrong act—we did chuſe theſe people, but they have gone contrary to our univerſal ſuffrage, and we have a right to rejudge them, and overturn what they have done. And I will give it you in the priſoner's own words, if it be true as charged in the libel, in his ſuppoſed ſpeech. 'If you appoint a man to act as your agent, and make his ſituation ſuch that he has every temptation to betray you, without incurring the danger of being called to an account, the probability is, that he will ſacrifice your intereſts to his own. It is therefore that a free ſuffrage of the people is what every man ought to deſire, as that alone can make the intereſt of the repreſentative and his conſtituents the ſame.'—Now, mark this, 'The great art of government, I apprehend, is this, that all ſhould be governed by all.' That is to ſay, that the whole of the ſuffragants, the whole voters, ſhall be governed by the whole voters.—What is this but ſaying, that the mob ſhall be governed by the mob, the multitude ſhall be governed by the multitude?—Who would be choſe a judge by ſuch governors? Becauſe they would rejudge him.—There has been one inſtance in France, where the revolutionary tribunal and the jury, having found that the people were innocent, theſe ſuffragants, theſe general voters thought the judges did wrong, and they judged them over again; and, if the account we have be true, every one of them were carried to the lamp-poſt. So the plan is, that there ſhould be an appeal from the guillotine to the lamp-poſt; that is the plan of this univerſal government. He ſays, 'Were all mankind to aſſemble in public meetings, one of two things muſt follow, either they will behave properly or improperly; if properly, their meetings will tend to do good, if improperly, it carries its own cure along with it. The people will ſoon be brought into a better method by a ſenſe of ſelf-preſervation, by which they will correct the errors into which they have fallen.' That is to ſay, they would cut one another's throats, and the few that remained would ſee their folly. But, my lords, further, this motion of rejudging of every thing, and of the conduct of parliamant, is carried through the reſolution which they came to, before God and the world, that if there ſhould be any propoſition

for bringing into parliament a Convention Bill they would reſiſt it. But, my lords, you need only to read theſe things; they do not need argument. I am therefore clearly of opinion that it is ſedition; not only tending to overturn the Britiſh government, but every government; and that it is moſt ſurely relevant to infer the pains of law.

Lord Dunſinnan. My lords, the conſideration of this very point was ſo lately before us, and the Court gave the ſame opinion which your lordſhips have now given, that I think it is unneceſſary for me to ſay more, than that I think, in this caſe, as I did in that, that this indictment contains matter relevant to infer the crime of ſedition.

Lord Abercrombie. My lords, the queſtion which has has been ſo ably argued to-day is preciſely the ſame that has been argued before your lordſhips in the former caſes. And, my lord, in the firſt place, I am now, as I was then, decidedly of opinion, that no good objection, has been ſtated to the relevancy of this indictment. In the ſecond place, I am of opinion, that the objection to the puniſhment of tranſportation, founded upon the act 1703, has no good foundation; and I think ſo for two reaſons. In the firſt place, that it does not apply to the crime charged againſt the pannel. The crime charged againſt him is ſedition, and ſedition of the moſt aggravated nature. A man may be guilty of leaſing-making without being guilty of ſedition; and *vice verſa*, he may be guilty of ſedition without being guilty of leaſing-making. In the next place, ſuppoſing that act to apply to this preciſe caſe, I am of opinion that the ſole and whole purpoſe of that ſtatute was to take away the puniſhment of death, leaving the power to inflict, according to the circumſtances of the caſe, either ſimple baniſhment forth of the realm, or baniſhment by tranſportation.

My lord, it was ſaid that upon looking into dictionaries, it appeared that baniſhment did not extend to tranſportation. But, my lord, every body knows that the ſame word may mean one thing in common language, and have a very different interpretation in a ſtatute; for, to give an example, my lord, *heir apparent*, I believe, in the Engliſh language, ſignifies a perſon the oldeſt ſon of another during his father's life, as the Prince of Wales is heir apparent to the crown; but your lordſhip knows, that heir apparent in the ſtatute law of Scotland has a very different interpretation; for by the law of Scotland, a man is not heir apparent to his father till his father be in the grave, and he may poſſeſs his eſtate for half a century in the character of heir apparent; and many other inſtances might be given. Even if we look into Johnſon's Dictionary for the word tranſportation, he ſays it is baniſhment for felony. Your lordſhip ſees, that even if we were at liberty ſtrictly to adhere to the common forms of ſpeech, the argument would not hold good, I have not the ſmalleſt doubt that your lordſhips have a power to baniſh by tranſportation.

My lords, the learned counsel for the pannel, both of them concluded a very long and able argument, with a circumstance which I own I heard with regret, because I always regret any circumstance which in my mind tends to aggravate the guilt of a person standing in the unfortunate situation of the pannel. Both the one and the other of his learned counsel, in speaking of the punishment of transportation, stated that his case would be extremely hard, because he was a gentleman, a man who possessed talents, qualities, and virtues which would be useful and ornamental to society. My lord, I am very sorry that such a man should be in his situation, because if he should be convicted it aggravates his crime highly. Had he been a man ignorant and uninformed, it might have been some apology for his offence; and though such a man when he transgresses against the laws of his country must be punished, yet it would have been a good reason for inflicting the mildest punishment that we could consistently with our duty inflict; but, my lord, if such are the qualifications of the pannel now at your bar, so much the deeper and more aggravated is his guilt; for, my lord, we all know from the highest authority, that *to whom much is given, of him much will be required.*

Lord Justice Clerk. My lords, when the question was before us this day week, the pannel applied for counsel, and I was very happy to hear that it coincided entirely with the opinion of all your lordships. My lords, I have attended with the greatest attention to all these questions of sedition, from the first of them down to the present day, and we heard similar questions upon the relevancy of Charles Sinclair's indictment discussed with great abilities at the bar, and also fully discussed by the court; and I do own, although I hope I am always open to conviction, in every question that comes before me, whether civil or criminal; yet I say I do own, that from the first to the last of these questions, I never, at any period, entertained two different sentiments. With respect to the first point, I am sure that much less than what is laid in the minor proposition would support the crime charged in the major proposition; and with respect to the judgment your lordships have given, I shall only say, that I am very clear we have full power to pronounce that sentence, and that we should not have done justice to the country if we had pronounced a smaller punishment upon any of those cases. I shall therefore not add any more, but that I concur with your lordships in the opinion that the libel is relevant to infer the pains of law.

Thursday March 13, 1794.

When the Court met, the interlocutor on the relevancy was read over, and the following gentlemen were chosen as Jurors:

David Deuchar, seal engraver, Edinburgh.
Peter Hill, bookseller there.
John Bell, bookseller, there.
James Hunter, merchant, there.
Andrew Miligen, watch-case-maker, there.
Sir William Forbes, Bart, banker, there.

Peter Mathie, jeweller, there.
Alexander Gardner, jeweller, there.
William Creech, bookſeller, there.
Thomas Hutchinſon, merchant, there.

Mr. Gerrald. My lord, I object to Mr. William Creech; I underſtand he has repeatedly declared, in private converſations, that he would condemn any member of the Britiſh Convention, if he ſhould be called to paſs upon their aſſize; and I wiſh to refer it to his own conſcience, and his oath, whether he has not prejudged the principles upon which I am to be tried.

Lord Henderland. My lord, the objection is, that he has prejudged the principles upon which Mr. Gerrald is to be tried; that he ſaid he would condemn every member of the Britiſh Convention; it is ſtated in a looſe way, it is not ſtated that he ſaid he would do ſo whether they were guilty or not; I cannot ſee that it is a relevant objection; if he had ſaid, he would condemn them whether they were guilty or not, it would have been a good objection, but at preſent it is too generally laid.

Lord Eſkgrove. If the allegation had been, that Mr. Creech had ſaid he would convict Mr. Gerrald, right or wrong, the objection would be good; but if it was only in common converſation that he had ſuch an opinion of the intentions of the Britiſh Convention, it is not a good objection.

Lord Swinton. I am of the ſame opinion.

Lord Dunſinnan. I perfectly coincide with your lordſhips.

Lord Abercrombie. I am of the ſame opinion.

Lord Juſtice Clerk. As this objection is ſtated, I hope there is not a gentleman of the jury, or any man in this Court, who has not expreſſed the ſame ſentiment.

Mr. Gerrald. Then my trial would be a matter of form merely, becauſe a juryman, by ſaying out of doors that he would condemn every member of the Britiſh Convention, takes for granted that very principle which remains to be proved. If a juryman had averſed only that he would condemn all the diſturbers of the public peace, no doubt he would be well warranted in making that aſſertion; but, he ſays he will condemn them, not becauſe they were diſturbers of the public peace, but becauſe they were members of a convention, the illegality of which yet remains to be eſtabliſhed. So that your lordſhip muſt ſee that ſuch a general declaration operates to the ſame concluſion, that he would condemn a man for that which may turn out to have been legal and conſtitutional.

Mr. Creech. My lord, I never ſaid ſo, it is impoſſible that I ever could ſay ſuch a thing.

Lord Henderland. I think Mr. Gerrald is very ill adviſed in the way in which he ſtated the objection; becauſe he has, in fact, acknowledged himſelf a member of the convention.

(*The objection was repelled.*)

John Hutchinſon, merchant, there.

John Sibbald, ſmith, there.
Alexander Niſbet, manufacturer, there.
William Ranken, taylor, there.
Archibald Campbell, brewer, there.

Lord Juſtice Clerk. Do you object to any of theſe gentlemen?

Mr. Gerrald. Yes, my lord, I object to William Ranken; and the ground of my objection is this, and I can ſuſtain it by both precedent and principle. It conſiſts in this, Mr. Ranken is taylor to the king; and, of courſe, being in the pay of the crown, being occaſionally in the habit of receiving favours from it, he cannot be a fit perſon to paſs upon my aſſize. And, my lord, I will ſuſtain it by precedent. In the trial of Algernon Sydney, which, I truſt, will never be adduced as a precedent, except to be violated, it is ſtated that 'the colonel excepted to ſeveral of the jury, to ſome as not be-'ing freeholders, and others as being in the king's ſervice, and re-'ceiving wages from his majeſty.' And, I find by the act of Parliament which took place immediately after the glorious Revolution for reverſing the attainder of Algernon Sydney, the very firſt cauſes ſtated as a ground of reverſing the attainder, are, 'Whereas 'Algernon Sidney, Eſq. in the term of St. Michael, in the thirty-'fifth year of the reign of our late ſovereign King Charles II. in 'the Court of Kings Bench at Weſtminſter, by means of an unlaw-'ful return of jurors, and by denial of his lawful challenges, and ſo on. For theſe reaſons the attainder was reverſed.

Lord Henderland. The very ſame objection was ſtated in the caſe of Mr. Muir, and was then repelled.

Lord Juſtice Clerk. If it had been the king himſelf I don't ſee that it could be a valid objection.

(The objection was repelled.)

EVIDENCE FOR THE CROWN.

William Scott ſworn. Examined by *Mr. Montgomery.*

Q. Does it conſiſt with your knowledge that a warrant was iſſued to apprehend the pannel at the bar?

A. Yes, he was apprehended on the morning of the 5th of December.

Q. Was you preſent at the declaration emitted by him that day?

A. Yes.

Q. Was it emitted voluntarily and freely?—A. It was.

Q. Was he ſober and in his ſenſes at the time?—A. He was.

Q. Look and ſee if that is it?

A. It is; it was emitted upon the 5th of December, and he found bail the ſame evening.

Q. Did you ſee him next day?

A. I did; on the evening of the next day I went to the meet-

ing of the British Convention, accompanied by the lord provoſt, ſheriff-ſubſtitute, and magiſtrates, in Lady Lawſon's yard; when we went in we found that whoever had been in the chair had left it. Mr. Gerrald was ſtanding near the chair ſpeaking to the meeting. Mr. Margarot ſaid, they were met upon a conſtitutional buſineſs, to addreſs the king, or ſomething to that purpoſe; and ſomebody called out, that nothing could be done till the chair was full. Mr. Margarot was called to the chair, and took it. Mr. Davidſon then aſked if that was the meeting calling themſelves the Britiſh Convention; they replied that they were; upon that he ſaid, "if that is the caſe, you muſt diſmiſs; we are come here for that purpoſe." Then there was a call for Mr. Gerrald to go on, but Mr. Davidſon oppoſed it, and took Mr. Margarot, who was in the chair, by the hand, and pulled him out, and then there was a call for Mr. Gerrald to take the chair, which he did, and Mr. Davidſon made uſe of the ſame means to induce him to leave the chair as he had done to Mr. Margarot, and he ſubmitted to the compulſion; they conſidered it as ſufficient that he was deſired to leave the chair and was taken by the hand. It was then ſaid that it was uſual, before diſmiſſing the convention, that they ſhould pray, which Mr. Gerrald did,* and then left the chair; but before he left the chair, as well as at the beginning of the meeting, it was called out that they would remember that the meeting had voted themſelves permanent the night before.

Q. Does it conſiſt with your knowledge that on the evening prior to this, the convention were diſmiſſed by the magiſtrates?

A. I was informed ſo.

Q. When Mr. Gerrald was brought for examination to the ſheriff-clerk's office, were there any papers brought?

A. Yes; when Lyon the meſſenger and other officers executed the warrant upon Mr. Margarot and Mr. Gerrald, they brought them to the office, with their papers.

Q. What became of thoſe papers?

A. After Mr. Gerrald and Mr. Margarot were examined, it was propoſed that the trunk ſhould be opened, but Mr. Margarot refuſed to deliver up the key; the trunk was kept till next day, when a warrant was iſſued to ſend him to jail till he did deliver it up; he refuſed ſtill to give it up, but finding there was a warrant iſſued, he held it in his hand and ſaid, if you chuſe to take it you may; he ſtepped aſide a little till it was opened, and when he returned he ſaw the papers looked over, and thoſe that did not apply to the buſineſs in hand were given up to them again.

Q. Was it opened in your preſence?

A. Yes, and in the preſence of Mr. Davidſon, the ſheriff-ſubſtitute.

Q. Look at that paper.

* *See Appendix, No. 2.*

A. It is the inventory of the papers found in the trunk.

Q. Were all the papers that were inventoried marked?—A. Yes.

Q. Would you know them again?—A. Yes.

Mr. Solicitor General. Look them over carefully by the inventory, and see if these are the papers so inventoried—are they marked with your initials?—Yes.

(The witness then examined the papers, and compared them with the inventory of the papers found in Mr. Margarot's trunk.)

Witness. The first seven articles were claimed by Mr. Gerrald, and the others by Mr. Margarot.

Mr. Montgomery. Were any other papers brought to the sheriff-clerk's office?

A. Yes; when the warrant was executed against this gentleman, one was executed against Mr. Sinclair also, at the Black Bull, who was very much indisposed at the time, and his papers remained at the office, till he was in a situation to come to be examined.

Q. Were you present when his papers were inventoried?

A. I was.

Q. Was Mr. Sinclair present?—A. He was.

Q. Had he an opportunity of perusing it?

A. It was read over to him.

Q. Did he object to any of the articles being put into it?

A. No.

Q. Look at that.

A. That is the inventory of Mr. Sinclair's papers.

(The Witness examined the papers, and compared them with the inventory.)

Q. Do you know that there was a warrant issued to apprehend Mr. Skirving?—A. Yes, at the same time.

Q. Were any papers of his found?

A. Yes, the warrant was executed by Lyon the messenger, accompanied by Fraser, Mack, and Dingwall.

Q. Were you present when the inventory of those papers was made up?—A. Yes.

Q. Who brought them to the sheriff-clerk's office?

A. The officers brought Mr. Skirving, with the papers in a bag Mr. Dingwall put his seal upon them, and Mr. Skirving also, and they remained sealed up in that bag till they were taken out before the sheriff.

Q. Were they taken out in his presence?—A. Yes.

Q. Are they marked with your initials?

A. Yes, they are; this is the inventory of them.

Mr. Clerk. My lord, I understand that the convention was not established under the denomination of the *British Convention*, till 19th November, 1793. Now, one and all of these papers, as I understand then, that Mr. Scott is going to prove, are of dates anterior to the existence of the British Convention, private papers of Mr. Skirving's, which cannot affect this cause.

Mr. Solicitor General. If theſe papers were produced for the purpoſe of rearing up a charge of guilt, founded upon theſe papers, the objection would be good, becauſe he is only charged with ſedition in the convention; but that is not the purpoſe for which they are produced; they are produced as papers not conſtituting guilt of themſelves, but as circumſtances of evidence, which, though I think they are not deciſive ones, ought to be laid before the jury.

Lord Juſtice Clerk. Are they libelled upon?

Mr. Solicitor General. They are all libelled upon.

Lord Juſtice Clerk. You know you are entitled to prove every fact and circumſtance that may eſtabliſh the pannel's guilt, as being art and part in the crime.

Mr. Solicitor General. It is very poſſible that the pannel may find ſomething among them that may be uſeful to himſelf; I don't know whether he will or not; there are nine tenths of them that I ſhall not ſay a word about.

(The witneſs examined and compared the papers found in Mr. Skirving's poſſeſſion with the inventory.)

William Scott croſs examined by *Mr. Clerk.*

Q. When did you firſt ſee Mr. Sinclair's papers?

A. On the morning of the 5th of December they were brought to the office, with Mr. Margarot's, and Mr. Gerrald's, but as Mr. Sinclair could not be brought to the office at that time, his papers were not opened till about the 7th or 8th, when he was able to come.

Q. How were the papers ſecured when you firſt ſaw them?

A. Wrapped looſely in a towel.

Q. Were they ſealed?—A. No.

Q. In whoſe hands did they remain from the 5th to 7th.

A. They remained in the ſheriff-clerk's chamber, in a locked room.

Q. You ſaid they were inventoried in the preſence of Mr. Sinclair?

A. Yes.

Q. Did he offer any proteſt upon that occaſion?

A. I cannot recollect.

Q. Try and recollect.

A. I know he declined anſwering queſtions.

Q. Did he offer to take a proteſt that theſe were not his papers?

A. I do not recollect it.

Q. You don't recollect the circumſtance of a proteſt at all?

A. No.

Q. Who were preſent beſides you?

A. Mr. Davidſon, Mack, and Lyon.

Q. I wiſh to aſk whether, when you went to this meeting, you ſaw any ſign of violence, riot, or diſorder?

A. No. I saw no confusion till the magistrates came there, there was no appearance of a riot.

Q. Do you know whether Mr. Sinclair's papers were opened by any person whatever, before he saw them.

A. No, not that I know of—they were locked up and sealed.

Mr. Gillies. Does it consist with your knowledge that a paper was given to Mr. Gerrald out of the bundle, previous to taking the inventory?

A. No, not previous to taking the inventory; amongst the papers there was one which he said was very material to him, and we thought in was of no consequence, and therefore gave it up to him upon the 6th, and a receipt was given for it.

Harry Davidson sworn. Examined by *Mr. Montgomery.*

Q. You are sheriff-substitute of the county of Edinburgh.

A. I am.

Q. Do you know that a warrant was issued against Mr. Gerrald?

A. Yes.

Q. Was he brought before you in consequence of that warrant?

A. He was.

Q. Look at that, is that the declaration that he emitted when he was brought before you?——A. Yes.

Q. Was it emitted freely and voluntarily?——A. Yes.

Q. Did he appear to be sober and in his senses at the time?

A. Yes.

Q. Did you observe upon what day that declaration was taken?

A. I think it was upon the 5th of December.

Q. Did you see Mr. Gerrald next day?

A. I did, in the evening, at a meeting of the British Convention in a wright's shop, in Lady lawson's yard, at the south side of the town. I went there with the lord provost and some of the magistrates, with a number of peace-officers; there was a very great crowd, the shop was quite filled when I went in; Mr. Gerrald was speaking; I saw a number of people whom I had seen the night before, particularly Mr. Margarot, and Mr. Gerrald. I asked if this was the British convention? I was told that it was. I told them I was the sheriff-substitute of the county; upon that Mr. Gerrald went on speaking. I begged that I might be heard; that I was the sheriff-substitute of the county, and was come to disperse the meeting. I addressed myself principally to Mr. Margarot, as he seemed to be the chief person there; I told him I considered the meeting as an illegal meeting, and I ordered the people to disperse; some conversation ensued upon that, and he told me they were a peaceable and constitutional meeting; that if I would hear what was then going on, I should be satisfied that they were what he said they were, and that they were then meeting upon a petition to parliament; and he shewed me a paper, laying upon the table, with the words "petition to parliament" written upon it. I told them that I came for

the purpoſe of diſperſing them, and that I was determined to remain there till they were diſperſed; finding that I was determined to diſperſe them, Mr. Margarot, with the approbation of the meeting, took the chair, and ſaid they ſhould not diſſolve till force was uſed. I told them I hope force would not be neceſſary; that I had force with me, but ſhould be ſorry to be under the neceſſity of uſing it. He ſaid ſome mark of force was neceſſary to be uſed; upon which I took him by the hand, and deſired him to come out of the chair: it was a friendly ſhake of the hand, but he thought that was too ſlight, I then put my hand to his ſhoulder, and he came out; they ſeemed to think that I had committed an aſſault upon them, and threatened to proſecute me; I laughed at them. Mr. Gerrald was then called to the chair, and I made uſe of the ſame kind of force with him; after that he made a prayer, which they ſaid was the uſual way of breaking up the aſſembly, and I certainly allow that I ſtaid till I ſaw them all out of the room; I then locked the door and took the key. Mr. Margarot ſaid it was unneceſſary to diſperſe them, for they had declared themſelves permanent. In anſwer to that I ſaid it might be ſo, but they certainly ſhould not meet any where in the county; that if they did, they ſhould be diſperſed in the ſame way that they were that night.

Q. When Mr. Gerrald was brought before you, were there any papers brought with him?

A. Yes, Lyon, the meſſenger, who apprehended Mr. Margarot, Mr. Gerrald, and Mr. Sinclair, brought a number of papers in a locked trunk; which, he ſaid, contained the papers of Mr. Margarot and Mr. Gerrald; they were not opened till the next day.

Q. Who had the key?

A. Mr. Margarot; he refuſed to give it up till a warrant was iſſued to open it by force.

Q. Was is opened next day in your preſence?—A. It was.

Q. Was there an inventory made of them?—A. Yes.

Q. Was Mr. Margarot and Mr. Gerrald preſent;

A. They were both preſent.

Q. Look at that paper?—A. This is the inventory.

Q. Did you ſign it?

A. Yes. Mr. Scott ſelected thoſe which he thought any way neceſſary or connected with the charge againſt him, and gave the reſt back; an inventory was made of thoſe that were retained, which is this in my hand. I ſee the papers that belonged to Mr. Gerrald have not my initials.

Q. Were they marked by Mr. Scott?

A. Yes, they are marked both with Mr. Scott's and Lyon's initials; thoſe claimed by Mr. Margarot are marked with my initials.

Q. Were there any papers ſaid to have belonged to Mr. Sinclair?

A. Yes, ſome of them were given back to him, and ſome of them were retained.

Q. Is that paper an inventory of them?

A. Yes, it is marked with my initials.

Q. Was Mr. Sinclair preſent when they were ſo marked?

A. Yes, he was

Q. Do you know of any papers of Mr. Skirving's being brought to the office?--A. Yes.

Q. Were they inventoried before you? A. Yes, they were.

Q. Look at that?

A. This is the inventory of them, and this is the ſcrall of the minutes of the convention which was found at Mr. Skirving's.

Q. Was Mr. Skirving preſent when that inventory was made up?

A. Yes.

Mr. Clerk. My lords, ſome of the papers libelled upon are not here. In the inventory of papers there is one mentioned 'The 'rules, orders, and regulations of the meeting called the Britiſh 'Convention,' which is wanting; for any thing I know that may be a very material piece of evidence to ſhew what was the particular nature of the convention, and with what particular views and for what particular purpoſes they met; and it is a very great defect in the evidence indeed, that the public proſecutor, after libelling upon theſe writings and inventorying them, has not produced ſo material a paper as this. I was entitled to come here, truſting that this paper would be produced by the public proſecutor. I ſay that paper containing the rules, orders, and regulations of the Britiſh Convention, is a material paper, and he does not produce it.

Mr. Solicitor General. The libel bears, that certain inventories are to be produced, and the papers mentioned in thoſe inventories the gentleman might have known two or three days ago, what were to be produced, and what not; and it was incumbent upon him to have inſpected them; and, if any were wanting, to apply for a diligence to enforce their production.

Lord Juſtice Clerk. The public proſecutor libels upon ſuch and ſuch papers; it was your duty to ſee if thoſe papers were in the clerk's hands, and if they were not, you could have applied to the Court and got a diligence for the recovery of it.

Mr. Solicitor General. And this happens to be a printed paper of which they muſt have one hundred copies in their poſſeſſion.

Mr. Laing. I don't know how we are to get a diligence when we did not know in whoſe poſſeſſion it was.

Mr. Montgomery. Here it is, my lord, I have found it among the papers; here are eleven copies of it; in going over the papers Mr. Scott happened to miſs it.

Harry Davidſon croſs examined by *Mr. Clerk.*

Q. It is hardly neceſſary to aſk whether you obſerved any thing like ſcenes of riot or tumult in the convention?

A. None at all.

Q. When did you firſt ſee Mr. Sinclair's papers?

A. The meſſenger, Lyon, brought them along with the other papers at the time Mr. Gerrald and Mr. Margarot were apprehended, but Mr. Sinclair being unwell, and confined to his room, he was not, on that account, brought to the ſheriff-clerk's office at that time.

Q. In what way were they brought to the office?

A. Tied up in a handkerchief. Lyon told me they were papers of Mr. Sinclair's, but I did not touch them. They were wrapped up and tied, but I did not obſerve any ſeal.

Q. I think you ſaid they were inventoried in Mr. Sinclair's preſence? A. Yes.

Q. Was you preſent? A. Yes.

Q. Did he ſign it? A. No.

Q. What did Mr. Sinclair ſay; did he deny thoſe papers to be his?

A. I do not recollect that. I think he acknowledged that they were his? becauſe, when the papers were ſelected, and part of them given back to him, he received them as his.

Q. Was any mention made by Mr. Sinclair of a proteſt?

A. I really do not know; one of the gentlemen did, but there were ſo many of them that I cannot ſay whether it was Mr. Sinclair or not.

Q. You are uncertain whether he took a proteſt or offered one?

A. I cannot ſay. I don't think Mr. Gerrald made uſe of the word proteſt; either Mr. Sinclair, Mr. Skirving, or Mr. Margarot did, but I cannot ſay which.

Q. Do you recollect that he gave any reaſon for not ſigning the inventory?

A. He refuſed to ſign it, becauſe he thought it was a wrong ſtep, contrary to law.

Q. Did he ſay any thing more as a reaſon for not ſigning it?

A. Upon my word I do not recollect. The ſum of what he ſaid was put down in his declaration.

Q. Can you ſay, from your own knowledge, that all proper and neceſſary means were uſed in order to prevent any other papers being introduced into the bundle; or, on the other hand, to prevent any papers from being taken away from that bundle?

A. I cannot ſay that I had any particular acceſs to know the fact, for I did not ſee them till they were afterwards opened in my preſence.

Q. Were they ſealed up before they were opened?

A. I don't think his papers were ſealed.

Q. Is it not uſual, in theſe caſes, to ſeal up the papers to prevent any from being taken away, and to prevent others from being put in? A. Yes.

Q. How was it that it was omitted upon this occaſion?

A. I cannot ſay; there was a great deal to do in the office; I was there from before nine in the morning, till between nine and ten at night; the papers were lodged by the meſſenger in the ſheriff-clerk's hands.

Mr. Solicitor General. You ſay they were opened in the preſence of Mr. Sinclair? A. Yes.

Q. Did he ſay there were any of the papers that were not his?

A. Mr. Gerrald, Mr. Margarot, and Mr. Sinclair, ſtaid in the ſame houſe together; and I remember one or other of them ſaying there was a paper that was not his, that it belonged to one of the other gentlemen.

Q. Did Mr. Sinclair acknowledge thoſe papers to be his?

A. When Mr. Scott ſelected them, Mr. Sinclair ſat by him, and what papers Mr. Scott did not think neceſſary to retain, he gave back to Mr. Sinclair.

Lord Dunſinnan. Did Mr. Sinclair ſee and know that they were marked as his papers, and made no objection to them?

A. Yes.

One of the jury. What length of time might elapſe between the time that the papers were brought to the office, and the time when they were opened?

A. They were taken upon the Thurſday, and they were not opened till he was able to come for examination, which was on the Saturday forenoon.

Q. Do you know, of your own knowledge, who brought thoſe papers; was it Lyon?

A. Lyon brought them into the office himſelf, in my preſence, and ſaid they were Mr. Sinclair's papers.

Q. Did Mr. Sinclair take any concern in what was paſſing, as to the inventory?

A. Not any thing further than putting into his pocket thoſe that Mr. Scott returned to him.

Lord Henderland. Do you know where they were kept from Thurſday to Saturday?

A. I do not of my own knowledge; but I think, when I aſked Mr. Mack, he ſaid they had been under his own lock and key.

Mr. Cillies. Was Mr. Sinclair deſired, upon that occaſion, to ſign the inventory? A. Yes he was.

Q. Did he ſign it?

A. I think he did not. In the firſt place he declined to ſign his declaration, becauſe he conſidered himſelf improperly brought before me, and I think he mentioned that as he had declined to ſign his declaration he ſhould decline to ſign the inventory of courſe.

Mr. Solicitor General. Did he complain of papers being taken from him under a general warrant as an illegal thing?

A. I don't know that he said any thing about general warrants; Mr. Margarot did, but Mr. Sinclair was much milder.

Mr. Gillies. The witness has said he refused to sign the inventory for the same reason that he refused to sign the declaration. Now, the fact is, that the declaration is signed by Mr. Sinclair.

Witness. That is a circumstance that I had forgotten.

Mr. Solicitor General. The fact is, he signed the first page of the declaration, and refused to sign the rest; that is the fact.

James Lyon sworn. Examined by *Mr. Montgomery.*

Q. Did you execute a warrant against Mr. Gerrald and Mr. Margarot?

A. Yes; I went to the Black Bull to enquire for these gentlemen; the waiter acknowledged they were in the house, but declined going with me to their rooms; he told me the number of their rooms, and the first room I went to was Mr. Gerrald and Mr. Margarot's. I knocked at the door, and they desired me to come in, which I did. I told them I had a warrant to carry them before the sheriff; they were in bed; they got up immediately; I collected together the papers that were in the room. Mr. Margarot proposed putting them in a trunk, and asked Mr. Gerrald if he would put his into it, he consented; they were all put in, and Mr. Margarot took the key into his possession. When he was coming away, says he, 'I don't 'give you the trunk, you may take it at your peril.' I told him I was not scrupulous about that, and immediately gave the trunk to a chairman, to put it into a coach. I looked out Mr. Sinclair's papers likewise, and took them at the same time.

Q. Speak to Mr. Gerrald's and Mr. Margarot's papers first.

A. I must rehearse this: When we came to the sheriff-clerk's office in the coach, I left the trunk and the other papers in the office, and sent a message to Mr. Scott to inform him of what I had done, and then I got a message from him to bring Mr. Sinclair in a chair. I went to Mr. Sinclair and told him; and then there came a message that they wondered I was so long, and then there came another message to let him remain at his lodging, which I did till between 9 and 10 o'clock at night.

Q. When was the trunk opened?

A. I think it was two days after.

Q. Was you present when it was opened? A. I was.

Q. Who had the key? A. Mr. Margarot.

Q. All the time? A. I know nothing to the contrary.

Q. Was there any inventory made up of the papers?

A. Yes, at the sheriff-clerk's office; there was none made at their lodgings. When the trunk was to be opened, Mr. Margarot would not give up the key, and it was proposed to get a Smith to break it open, but it was delayed that day. The next day Mr. Margarot was brought before the sheriff-substitute and Mr. Scott; he said he would not give it up, but held it in his hand, so, (*describing it*)

and ſaid it muſt be taken from him by force; Mr. Scott was going to take it from him, but Mr. Davidſon ſaid no, he muſt not do it, ſome other body muſt do it, and then Mr. Mack gave a gripe at it, and took it from him; it was then opened, an inventory was made, and I put my initials at the back of it.

Q. Look at theſe papers, and ſee if theſe are the papers you found in Mr. Gerrald's room?

A. Yes, they are, they have my initials upon them.

Q. Was Mr. Sinclair in a ſeparate room from Mr Gerrald and Mr. Margarot when you executed the warrant? A. Yes.

Q. Were the papers ſeparate? A. Yes.

Q. And you brought them with you to the ſheriff-clerk's office?

A. Yes; and Mr. Margarot and Mr. Gerrald were in the chariot with me.

Q. What did you do with Mr. Sinclair's papers?

A. I left them in the ſheriff-clerk's office.

Q. Was you preſent afterwards, when they were opened?

A, Yes.

Q. How long after was it?

A. I am not certain; it might be a few days after.

Q. Did they ſeem to be in the ſame ſituation as when you brought them into the office?

A. They appeared to me ſo; they were in my handkerchief, my name was in the handkerchief.

Q. Were you preſent when the inventory of them was made out?

A. Yes.

Q. Was Mr. Sinclair there?—A. Yes.

Q. Were any papers given back to him?—A. Yes.

Q. Did he take them?

A. He took all that were given him, which was ſome that were not conſidered material to the buſineſs in hand.

James Lyon, croſs-examined by *Mr. Clerk*.

Q. You have ſaid that you carried Mr. Sinclair's papers to the office yourſelf?—A. Yes.

Q. And left them there.—A. Yes.

Q. Was there any objection make by any perſon concerning the manner in which you had ſecured thoſe papers in the ſheriff-clerk's office, or any where elſe; did nobody tell you it was exceedingly dangerous to keep thoſe papers unſealed up?

A. A do not recollect any ſuch thing.

Q. Did nobody ſay that other papers might be put in that did not belong to Mr. Sinclair?

A. To the beſt of my remembrance no perſon ſtated anyſuch thing; and, with humble ſubmiſſion to you, my lord, I went from the ſheriff-clerk's office to bring off Mr. Sinclair, and I was not back till 9 or 10 o'clock at night, ſo that the papers were in the ſheriff-clerk's office all that time.

Q. Did you take any notice of Mr. Sinclair's papers when you ſeized them?

A. I found ſome of them lying upon the deſk, and one paper I got lying below the bed.

Q. Have you any other means of knowing that theſe are the ſame but that of knowing your own handkerchief?

A. Upon my word I don't think there was any thing elſe.

Mr. Solicitor General. At the ſheriff-clerk's office, did you deliver them into any body's cuſtody?

A. There were two of Mr. Scott's clerks there, Mr. Mack and Mr. Dingwall, but I was ſo hurried I was not there, I dare ſay five minutes; but I think I deſired them to take care of them.

Q. A day or two afterwards, when you ſaw this bundle opened, had you any reaſon to believe or ſuſpect that any alteration had been made?

A. No, none at all; they appeared to me to be in the ſame ſtate.

Mr. Gillies. Did you ſee Mr. George Sinclair at any time with Mr. Charles Sinclair?—A. Yes.

Q. Did he ſay any thing to you upon this ſubject, about their being tied up looſely; recollect yourſelf?

A. I will. Have patience, and I will recollect.

Lord Juſtice Clerk. Who is Mr. George Sinclair?

A. He is Mr. Sinclair of Bride End. I have ſome faint remembrance that he ſaid ſomething about an inventory, but I don't recollect that it was while I was with Mr. Charles Sinclair; I don't know but it was after they were examined, I am not ſure.

Mr. Clerk. Was Mr. George Sinclair preſent when the inventory was taken?

A. He was not in the ſheriff-clerk's chamber that day.

Q. Did you ſee Mr. George Sinclair either before or after taking the inventory?

A. I ſaw him that day that I was waiting with Mr. Charles Sinclair; and, if I miſtake not, he was over at the office, but I think not the day that the papers were examined.

Q. Have you any recollection of any thing of this kind being ſaid by Mr. George Sinclair?

A. I cannot ſay; I cannot be poſitive; I am upon my oath, and I muſt be guarded in every reſpect.

Q. Did he not tell you that it was wrong and dangerous not to inventory theſe papers when they were ſeized?

A. To the beſt of my recollection he ſaid ſomething, that it was a pity but there had been an inventory, or ſomething of that nature.

Joſeph Mack ſworn. Examined by *Mr. Montgomery.*

Q. Did you attend the ſheriff-clerk's office?—A. Yes.

Q. You are clerk there?——A. Yes.

Q. Were you present at the execution of the warrant against William Skirving, secretary to the British Convention?

A. Yes.

Q. Did you see the papers found in his possession?——A. Yes.

Q. Was there an inventory made of them?

A. Yes; they were put into a bag, and sealed by Mr. Dingwall and Mr. Skirving.

Q. Did you see the inventory of them?

A. I came in while the declaration was making, and I saw the inventory made out.

Q. Were the papers acknowledged by Skirving?

A. Yes; and the papers that were of no consequence were given back to him.

Q. Did he acknowledge these papers to be the same that were put into the bag?—A. Yes.

Q. Were you in the sheriff clerk's office when some papers were brought in a trunk?—A. Yes.

Q. Who brought them?

A. I believe it was James Lyon, the messenger; the trunk came into my possession very soon after.

Q. Did you write an inventory of the papers in that box?

A. Yes.

Q. Were any other papers brought besides those that came in the box?

A. There were some papers which came in a napkin.

Q. Did you keep those papers?—A. Yes.

Q. Did you keep them locked up?—A. Yes.

Q. Did you see an inventory made of them likewise?—A. Yes.

Q. And they were in your possession till the inventory was made?

A. Yes, and after it too.

Lord Eskgrove. During the time it was in your possession, were there any papers taken out or any put in?—A. None.

Mr. Solicitor General, Was it under your lock and key all the time—A. It was.

Mr. Montgomery. Have you the charge in general of all the papers in that office?—A. Yes.

Q. Is that the inventory that was made up of Mr. Sinclair's papers?—A. It is.

Q. Look at that bundle of papers and see if they are the papers in the inventory?

A. *(Looks over them.)* My initials are upon the back of every one of these papers.

Q. Do you see Mr. Scott's initials upon them likewise?

A. Yes, and Mr. Davidson's likewise.

Joseph Mack cross-examined by *Mr. Clerk.*

Q. You spoke of some papers being brought loose in a napkin

Was you in the office when they were brought?

A. I cannot ſay poſitively that I was in the office, but I got them ſoon after.

Q. You cannot recollect then, poſitively, who put them into your hands?

A. I believe I found them in the ſheriff's room.

Lord Juſtice Clerk. Was the ſheriff there himſelf?

A. Mr. Davidſon, Mr. Scott, and Mr. Dingwall were in the room.

Mr. Clerk. Were they under the charge of any particular perſon?

A. No; they were lying in the room, and I took them away.

Q. I think you ſaid theſe papers were afterwards locked up?

A. Yes.

Q. When did you lock them up?

A. After the examinations that day were finiſhed.

Q. At what time was that?

A. I cannot exactly recollect; it might be about 9 o'clock.

Q. Lyon brought theſe papers looſe in a napkin, and the box was locked?—A. Yes.

Lord Juſtice Clerk. And the napkin was not locked?—A. No.

Mr. Clerk. Is it not uſual when you ſeize papers to ſeal them up?—A. Yes.

Q. Was you preſent when the inventory was taken?—A. Yes.

Q. And Mr. Sinclair was preſent?—A. Yes.

Q. Was you preſent when an objection was taken, either by Mr. Sinclair or for him, upon the ground that the papers were not ſealed up?———A. I do not recollect it.

Q. Do you recollect Mr. Sinclair's declaration upon taking the inventory?——A. Yes.

Q. What did he ſay when this was doing?

A. He ſeemed very eaſy upon the buſineſs, and behaved very much like a gentleman.

Q. Did he ſay the papers were his?

A. He did not deny that they were his; he took back the papers that were returned to him.

Q. Did he ſay any thing about a proteſt?

A. Yes, he offered to take a proteſt, and Mr. Davidſon told him it was not uſual to receive proteſts in theſe caſes.

Q. Upon what ground did he offer to take a proteſt?

A. Becauſe his papers were taken from him, as he imagined, illegally.

John Dingwall ſworn. Examined by *Mr. Montgomery.*

Q. Were you preſent at a ſearch made in Mr. Skirving's houſe for papers? A. Yes.

Q. Did you find any papers there? A. Yes.

Q. Were they put into a bag in your preſence?

A. They were put into two bags.

Q. And were they ſealed? A. Yes.

Q. In Mr. Skirving's preſence?

A. Yes; I put my ſeal upon one end, and he put his ſeal upon the other.

Q. Did you ſee thoſe bags afterwards? A. Yes.

Q. Where? A. In the ſheriff-clerk's office.

Q. Look and ſee if theſe are any part of them?

A. This paper, or ſcroll of minutes, I found lying upon the table in Mr. Skirving's room.

Q. Did you ſee an inventory made up of theſe papers? A. Yes.

Q. It was fairly made up? A. Yes.

Q. Did you aſſiſt in making it up?

A. I made out Mr. Skirving's declaration.

Q. Was you preſent when Mr. Sinclair's papers were brought into the ſheriff-clerk's office? A. No.

Thomas Cockburn ſworn. Examined by *Mr. Anſtruther.*

Q. Did you belong to the ſociety of the friends of the people?

A. I was a member of that ſociety.

Q. Was you a delegate to the convention that met in Edinburgh in October laſt? A. Yes.

Q. Did you attend that that afterwards met in November?

Q. Yes; the Britiſh Convention?

Q. What was the occaſion of the meeting of the ſecond convention in November.

A. The occaſion, ſo far as occurs to me, was the arrival of ſome delegates from England.

Q. Was the pannel at the bar one of thoſe delegates from England, in conſequence of whoſe arrival that ſecond convention met?

A. I always underſtood that Mr. Gerrald was one of them.

Q. When you firſt met in October, what did you call yourſelves.

A. The convention of the Friends of the People, and afterwards the Britiſh Convention, as I underſtood, but I was not preſent at the time?

Q. Did you attend frequently?

A. I attended frequently, and was abſent frequently.

Q. And what title did you give each other?

A. There were various deſignations, but Citizen was the one they moſt commonly uſed.

Q. When you were divided into ſmaller bodies, what did you call yourſelves?

A. They were firſt, I think, denominated Diviſions; afterwards Sections, and there was another name which I do not recollect.

Q. What name were they moſt frequently called by?

A. I do not recollect at preſent.

Q. Do you recollect any inſtitution of what was called Primary Aſſemblies? A. No.

Q. Do you recollect their being divided into Primary Societies?

A. No.

Q. Did you ever hear departments mentioned?
A. I do not recollect.
Q. Had you different kinds of committees appointed?
A. Yes.
Q. Do you recollect the names of any of thoſe committees?
A. I think there was one of them deſigned the Committee of Union.
Q. Had you any Committee of Organization?
A. I think there was.
Q. Was there any that took charge of your money matters; how was that deſigned?
A. They were not very regular; but there was a committee inſtituted for that purpoſe, which was uſually called the Committee of Finance.
Q. And likewiſe Committees of Inſtruction?
A. I do not recollect that.
Q. For inſtructing different parts of the kingdom, ſuch as the Highlands, and giving them political knowledge?
A. There was a motion, I recollect, for promoting conſtitutional knowledge.
Q. Do you recollect that there was a committee for that purpoſe?
A. So far as I recollect at preſent there was mention made of a committee for promoting conſtitutional knowledge.
Q. Had you likewiſe a Committee of Secrecy?
A. It may be called a Committee of Secrecy, but there was no name that I know of given to it by the convention.
Q. Which carried on its proceedings more privatel ythan the other committees from which it got its name, I ſuppoſe, of a Committee of Secrecy? A. Yes.
Q. When you met, what did you call your meetings?
A. They were moſt frequently called Sittings, but I paid very little attention to that circumſtance.
Q. Did you ever hear of any perſon who had deſerved well getting the honours of the ſitting?
A. I think I have heard in one of the committees ſome ſuch thing of a ſingle perſon; humorouſly it might have been mentioned by ſome humouriſh man, and I don't doubt but it might be taken down in the minutes, but thoſe minutes were never authenticated by the convention, becauſe it was deſigned that they were to have a committee to reviſe them.
Lord Eſkgrove. Was any perſon, a ſtranger, ever admitted to a ſitting in the convention?
A. All I recollect is, that the honours of the ſitting were mentioned.
Lord Eſkgrove. To the beſt of your recollection, was any ſtranger ever allowed to ſit in the convention, upon a motion of that ſort?

A. I do not recollect. I think I recollect it was rather honourable mention than honours of the ſitting that I heard.

Mr. Anſtruther. When you received pecuniary aſſiſtance, was honourable mention made of it?

A. It is that that occurs to my recollection moſt, but I cannot be very poſitive; I only recollect ſomething of the word honourable mention, or ſomething of that nature.

Q. How did you date your proceedings on what took place in the convention? Did you take the year of God in the common way, or in any other way? A. I cannot recollect.

Q. Did you ever hear of the firſt year of the Britiſh Convention, for example?

A. I cannot recollect; I never looked in the minutes.

Q. Was it not the practice in the convention to read over the ſubſequent day what paſſed the day before?

A. I was not there till the buſineſs of the day was generally over.

Q. Did you never hear what was the manner of their dating their minutes?

A. I don't recollect any thing about it; I cannot ſay either one way or the other; I was ſeldom preſent when that buſineſs was done; but I once remember hearing it read before the convention went to buſineſs.

Lord Juſtice Clerk. Have you no recollection of hearing of the firſt year of the Britiſh Convention?

A. I think I remember hearing ſomething of that kind, but I cannot ſay upon what occaſion.

Mr. Anſtruther. Did you ever ſee the pannel there?—A. Yes.

Q. Did he frequently ſpeak there?

A. Not ſo frequently as others.

Q. Did he ever act as preſes?

A. I don't recollect ever ſeeing him act as chairman in my life.

Q. Did you ever ſee him act as chairman to any of the committees?—A. I was not a member of any of the committees.

Q. Did you happen to be preſent at a meeting on the 21ſt of November when the meaſure of a general meeting of the Scotch and Engliſh delegates was propoſed?

A. There was a committee of union appointed to draw up regulations with reſpect to the people in England and the people in Scotland, whoſe minds might be one, with reſpect to the ſubject of reform, in order that they might be united in their endeavours.

Q. Do you recollect upon that occaſion the pannel at the bar making a ſpeech, and you ſay he made few ſpeeches, ſo that you will be the better able to recollect?

A. I ſaid he did not ſpeak ſo frequently as ſome.

Q. Do you remember that ſpeech?

A. I think there was a converſation one evening with reſpect to

the union, and to the beſt of my recollection he did ſpeak upon that occaſion ; I was there part of the time.

Q. Was you at that time in the practice of reading the Gazetteer when publiſhed?—A. I uſed to read part of them.

Q. Did you read that in which Mr. Gerrald's ſpeech appeared, of which you ſay you heard a part?

A. I cannot ſay but I might have ſeen it, but at this diſtance of time I can ſay very little about it. I make no doubt but I read it.

Q. Did you think that the account you ſaw in the paper agreed with what you heard in the meeting?

A. My memory is not ſo tenacious as to recollect a long ſpeech ; I cannot be very poſitive.

Q. But in ſubſtance did it appear to you to be the ſame that was delivered by Mr. Gerrald.

A. All I can ſay is, that I am ready to give a candid anſwer to any thing that I know, but as to what may be read from a newſpaper I cannot ſay.

Mr. Solicitor General. The queſtion is, whether the account given in the Gazetteer agreed with what you heard in the convention.

A. So far as I recollect I did not obſerve any thing remarkably deficient in it.

Q. Look at that paper and read it?

A. With reſpect to newſpapers, I hope the Court will allow me this, which I think is fair, that any queſtion that is put to me, or read to me, I ſhall endeavour to give a fair anſwer, but as for reading it, I will not be concerned with it.

Mr. Anſtruther. Was you preſent when a motion was made by Mr. Callander, to this purpoſe, ' that in caſe the miniſter, or any ' other member, bring into the Houſe of Commons a motion for a ' Convention Bill, as paſſed in Ireland, for preventing the people ' from meeting according to their juſt rights by the Revolution, ' the ſame motion ſhall be noticed to the delegates of the reſpective ſocieties, immediately to meet in convention to aſſert their ' rights ?'

A. To the beſt of my recollection, I heard a motion of Mr. Callander's read one night to that purport.

Q. Was that motion made the ſubject of diſcuſſion at a future meeting?

A. I don't recollect being preſent upon that buſineſs till it was taken up as a report returned from a committee.

Q. Who was it that read that report?

A. I think it was Mr. Sinclair.

Q. Did you read thoſe parts in which the minutes of this convention were given an account of?—A. Yes.

Q. Was any reſolution adopted in the convention in conſequence of this report?

A. So far as I recollect, the convention converſed upon the report a long time; and, if I remember right, they agreed, that in caſe of a Convention Bill, ſimilar to that which had paſſed in the parliament of Ireland being brought into the parliament of England, that that ſhould be conſidered as a reaſon why they ſhould hold a meeting, which was mentioned as a Meeting of Emergency.

Q. Did you hear of any other caſes in which they were to meet?

A. I think there were others in the report; but I am not able to ſay poſitively whether they were taken into the conſideration of the convention.

Q. Do you recollect any other caſes?

A. I think one of them was a ſuſpenſion of the *Habeas Corpus Act;* and I think there was mention made of the landing of foreign troops, or a foreign invaſion, I am not certain which.

Lord Juſtice Clerk. Did you think they might not be both uſed?

A. I cannot ſay.

Mr. Anſtruther. What troops did you ſuppoſe thoſe foreign troops were?

A. I cannot ſay; it might be the troops of any country, it was in a general ſenſe.

Q. Did you ſuppoſe they were to meet upon the landing of troops who were our allies though not Britiſh troops, for inſtance Heſſians and Hanoverians?

A. As to the intention of that, it is what I cannot enter into.

Q. Upon the oath you have now taken, did you hear that the convention were to meet upon the landing of Heſſians or Hanoverians in this country?—A. I cannot recollect.

Q. You have mentioned three caſes of emergency; was any mention made of the ſuſpenſion of the act for preventing wrongous impriſonment?—A. I do not recollect.

Q. Where were they to meet?—A. I know not.

Q. Who was to fix the place of meeting?

A. To the beſt of my recollection there was a committee appointed for that purpoſe.

Q. Were they to keep it in ſecret till it happened?

A. They were not to tell it; there was a confidential truſt repoſed in a few that they were to fix the place and find ways and means.

Q. Was there any mention of ſealed letters being delivered to them fixing the place of meeting, which were not to be opened till delivered by the delegates to their conſtituents?

A. I think I heard a mention made of ſealed letters, but then I don't ſay that that was the mode that was determined.

Q. What number was to proceed to buſineſs in caſe of theſe events happening?—A. I cannot be poſitive upon that ſubject.

Q. Was this reſolution come to in a more ſolemn manner than any other reſolutions in the convention?

A. So far as I recollect the convention deliberated upon it in a very decent, ſerious manner; and at laſt, they reſolved it ſtanding.

Q. They all ſtood up, to declare their purpoſe of carrying it into execution more ſolemnly than uſual?

A. We all ſtood up; and I think we did ſo upon another occaſion,

Q. Do you recollect what that other occaſion was?

A. I rather have heard of it than was preſent at it.

Q. Was it at the propoſal for a union?

A. I was not preſent.

Q. Or upon their changing the deſignation of their meeting to that of the Britiſh Convention?—A. I was not preſent.

Q. Did they, in paſſing this reſolution, declare before God and the world, that they would do ſo and ſo?

A. I recollect the expreſſions before God and the world were made uſe of.

Q. Did you ever hear ſuch ſolemn expreſſions made uſe of upon any other occaſions?—A. I do not recollect.

Q. Did the pannel make a ſpeech upon that occaſion, after this reſolution was ſo ſolemnly paſſed?

A. So far as I recollect, Mr. Gerrald did ſpeak, after the reſolution.

Q. Did you pay attention to this ſpeech?—A. Yes.

Q. Did you afterwards read that ſpeech in the Gazetteer?

A. I do not doubt but I might in reading the Gazetteer.

Q. And did the account in the Gazetteer much differ from what you had heard?

A. I can ſay no more than I have already ſaid, that I did not obſerve any thing remarkably erroneous in it.

Q. Was it a cool deliberate kind of ſpeech, or was it warm and animated?

A. I don't recollect, but Mr. Gerrald ſpoke in his uſual tone.

Thomas Cockburn croſs examined by *Mr. Clerk*.

Q. You ſaid you was a member of the convention; what did you underſtand to be the purpoſes for which they met?

A. The purpoſes in general, for which the convention met, was a reform in the Britiſh Houſe of Commons.

Q. By what means did the convention intend to accompliſh this reform?

A. The means, ſo far as I underſtood, that they intended to uſe, was to endeavour to collect the minds of the people who were of the ſame opinion, and, by legal methods to obtain their object, in a peaceable manner, ſo far as I underſtood.

Q. Were they to petition parliament?

A. It was agreed upon in the convention as I underſtood in October; but I was not preſent.

Q. What did you underſtand to be the object of the Britiſh Convention which met in November?

A. I underſtood nothing eſſentially different from the convention that met before; the only difference was the acceſſion of a number of delegates from England; their deſign I underſtood to be the ſame.

Q. You have been aſked whether Mr. Gerrald made a ſpeech upon the 21ſt of November; now I beg leave to read it over to you, and then tell me if you recollect Mr. Gerrald making ſuch a ſpeech?

A. If there are any words that I recollect I ſhall tell you.

Mr. Barnet. He has already ſaid, that when he read the Gazetteer there was nothing eſſentially different.

Mr. Clerk. He ſaid, that he generally read the Gazetteer, and he perceived nothing remarkably deficient; he ſpoke generally. I have not yet heard the witneſs ſay that he heard Mr. Gerrald make this ſpeech which ſeems to be principally founded on in the indictment; and therefore I conceive it neceſſary that the fact ſhould be aſcertained, whether the witneſs heard that ſpeech, yea or not.

Mr. Solicitor General. I can certainly have no objection, except this, that the witneſs has been examined on the part of the proſecutor, and has given all the anſwers that he can give.

Lord Juſtice Clerk. There is one obſervation, I ſhall make to the gentlemen of the jury, that this witneſs has attended ſeveral meetings of the convention, and when he was there, Mr. Gerrald made ſome ſpeeches, although not ſo many as ſome other people did; and he tells you he was induced to read the Gazetteer, at leaſt, ſo far as related to the proceedings of the convention. The ſpeeches made to night are publiſhed in the Gazetteer to-morrow, and I would aſk whether that witneſs's comparative view of the ſpeeches at that time, or ſo long after, is moſt likely to be right.

Mr. Fletcher. He ſays there was nothing *remarkably erroneous:* now that appears to me clearly to imply that there was *ſomething* erroneous.

Lord Juſtiee Clerk. It does no ſuch thing.

Lord Henderland. The way that I have taken it down is this, that he did not obſerve any thing remarkably deficient or erroneous in the ſpeeches in the Gazetteer; that he don't doubt but he may have read it in the Gazetteer, and did not recollect any material difference.

Mr. Fletcher. Your lordſhip will allow me to explain my meaning: the words are, that he obſerved nothing remarkably erroneous; I ſubmit to your lordſhip, and to every man who hears me, if that does not imply that there was ſomething erroneous; it may there-

fore happen that upon reading it over to the witneſs, he may ſay that thoſe parts charged as moſt criminal are erroneous.

Lord Juſtice Clerk. I deny the concluſion Mr. Fletcher has drawn from his premiſes; the plain meaning is, that there was no remarkable difference.

Mr. Gillies. It is certainly true, that his recollection muſt have been more accurate then than at preſent; but this is equally true, that the witneſs, having juſt heard thoſe ſpeeches, would not read them with that attention that he might if he now read them: for my own ſhare, in ſuch circumſtances I ſhould not have read it at all.

Lord Juſtice Clerk. I think the witneſs' own idea of the matter is very different: he ſays he read over the Gazetteer, and obſerved nothing remarkably deficient. What do your lordſhips ſay; ſhall it be read, yea or nay?

Lord Henderland. I don't ſee any particular reaſon why it ſhould not be read.

Mr. Solicitor General. Let the witneſs read it himſelf?

A. No, I beg to be excuſed; I think I ſhould remember it better by hearing it read than by reading it.

(The Clerk of the Court then read the ſpeech from the Gazetteer.)

Mr. Clerk. Do you recollect reading the ſpeech you have now heard in the Gazetteer?

A. I think, ſo far as I recollect that it is the ſame.

Q. Do you think it has miſtated any thing that was delivered in the ſpeech?

A. I think in the courſe of reading, I recollect *a great many words interſperſed through this ſpeech* that I recollect Mr. Gerrald ſpoke in the courſe of a ſpeech one evening; but I *do not mean to identify the whole ſpeech.*

Q. You mentioned a motion of Mr. Callender's when you was preſent?

A. I heard a motion made which I underſtood to be a motion of Mr. Callender's.

Q. It was read to you from the indictment, but I ſhall read it to you again—"That in caſe the miniſter, &c. *(reads the motion from the indictment)* I think you ſaid, to the beſt of your remembrance, this was the ſubſtance of the motion you heard?

A. Yes.

Q. I ſhall now read it from the minutes of the convention: 'That 'in caſe the miniſter bring into the Commons Houſe of Parliament a 'motion for a Convention Bill, it ſhall be noticed immediately to the 'delegates.' You will obſerve this is a much ſhorter, motion and ſomething different: now which of theſe, according to your recollection, was the real motion you heard at the time?

A. Who had the management of the buſineſs I cannot ſay; but the thing that was firſt read was ſimilar to what I heard.

Mr. Solicitor General. Mr. Clerk has had one ſpeech read to this gentleman, I deſire that the other may be read, and he will ſay whether he recollects any material errors.

(The Clerk then read the other ſpeech from the Gazetteer.)

Mr. Solicitor General. Now, is this nearly the ſubſtance, or do you recollect any great difference?

A. I recollect conſiderably leſs of that than I do of the other; the beginning of it I don't recollect at all.

Lord Juſtice Clerk. Did you read the Gazetteer when it was firſt publiſhed?

A. I was in the habit of reading the Gazetteer.

Lord Juſtice Clerk. It gives me great pleaſure to hear a witneſs, who was a member of a convention like this, give his evidence fairly, like an honeſt man.

A. I wiſh the gentlemen of the jury to underſtand that I have not identified the ſpeeches in the Gazetteer.

Mr. Solicitor General. We know you have not; nor ſhall any body ſay that you have.

Mr. Clerk. I obſerve a great many ſentences in this indictment, printed in italics; and I take notice of this, that the jury may be upon their guard, and not ſuffer themſelves to be miſled by that means.

Mr. Solicitor General. It is very wrong, that there was any part of it printed in italics, and how it happened I don't know; but all I can ſay is, to deſire the gentlemen of the jury to pay no regard to them.

Alexander Aitcheſon ſworn.

Lord Dunſinnan. Has any body offered you any reward, or promiſe of reward for giving evidence here?——A. None.

Q. Has any body told you or inſtructed you what to ſay?

A. If his majeſty himſelf had inſtructed me what to ſay I would not have regarded it.

Q. Have you any malice or ill-will againſt the pannel at the bar?

A. No, far from it; I conſider him as a ſecond LYCURGUS, a voluntary exile for the good of his country, and for the ſame reaſon too;—a wiſh to give a better code of laws to his countrymen than they have hitherto enjoyed.

Q. You was a member of the Britiſh Convention?

A. Yes, I had that honour.

Lord Dunſinnan. You will remember that whatever you may ſay regarding your own conduct you cannot be made an object of proſecution for.

A. *My family* is doubtleſs obliged to the public proſecutor.

Examined by *Mr. Anſtruther.*

Q. You was a member of the convention of October?

A. Yes.

Q. That was given up?—A. Yes after they had ſat four days.

Q. When was it reſumed again?

A. I do not at preſent recollect, but it was ſome time in November.

Q. Was you a delegate?——A. Yes.

Q. Did not you give in a reſignation?

A. Yes, I gave in my reſignation, as I had not time to tend regularly, but it was not accepted, and I did therefore attend occaſionally.

Q. What was the occaſion of their meeting the ſecond time?

A. Becauſe the delegates from England did not arrive in time enough, and therefore we were called together again upon their arrival.

Q. Who were thoſe delegates?

A. There were four or five of them: there was Citizen Margarot, Citizen Yorke, who I believe has ſince died abroad, Citizen Browne, Citizen Sinclair, and the pannel at the bar.

Q. When you firſt met in October, and afterwards in November, by what deſignation did you paſs?

A. The Convention of Delegates.

Q. Did you change that deſignation?

A. Yes, to that of the Britiſh Convention.

Q. What was the purpoſe of your meeting?

A. To obtain a Reform in Parliament, by Annual Parliaments and Univerſal Suffrage.

Q. Who acted as ſecretary?—A. Citizen Skirving.

Q. Had he any aſſiſtant?—A. Yes, I had that honor.

Q. Did you frequently attend in that capacity?

A. I did, as often as I could.

Q. Were there any minutes of the proceedings?

A. Yes, there was a ſcroll of minutes.

Q. Should you know them again?——A. Yes, certainly.

Q. You wrote part of it yourſelf?——A. Yes.

Q. Was it not the practice of the Britiſh Convention, always on the ſubſequent day, to read over the minutes what paſſed the day before?

A. It was the general practice, but was ſometimes neglected.

Q. Were there ever any obſervations or remarks made?

A. Corrections were frequently ſuggeſted at the time, and other corrections were delayed till the committee ſhould meet to correct the whole.

Q. From what you know of thoſe minutes, that you had occaſion to take down yourſelf, do you think the account they gave was a fair and accurate account?

A. As far as my memory could ſerve me, though no doubt I may have made many miſtakes.

Q. Had you occaſion to hear the minutes read over, of what paſſed when you was preſent?—A. Yes, frequently.

Q. Did the pannel at the bar frequently attend the meetings of the convention; was he conſtantly attending?

A. Whether he was conſtant or not I cannot ſay; I have ſeen him there.

Q. Did he take an active part in the buſineſs?

A. He took an active and a very public ſpirited part.

Q. Did he act as preſes or chairman?

A. I do not recollect his being called to the chair, I rather think he was not.

Q. Do you recollect, on any of the nights that you attended the Britiſh Convention, any propoſal having been made for a union between the delegates of the two countries, England and Scotland?

A. Some ſuch propoſal I believe was made when I was abſent, but I think I heard of it.

R. Did you come in during the evening when it was canvaſſed?

A. Yes, I did.

Q. Did you hear any thing of a Committee of Union to be appointed?

A. I heard that there was ſuch a thing propoſed.

Q. You was not in when the propoſal was made?

A. I am not certain, but I rather think not.

Q. Was you preſent when the pannel made any ſpeech?

A. I was preſent when he made ſeveral; and I was told he had made many when I was abſent, which I regretted that I had not heard.

H. Do you remember that he made any upon this propoſal of union?—A. I cannot charge my memory with it.

Q. If you came in, in the courſe of the night, when the propoſal was made, it is poſſible you may recollect?

A. I came in upon this occaſion, while Mr. Gerrald was ſpeaking.

Q. If the ſpeech, or a part of it, was read to you, you could poſſibly tell whether it was accurate or not?—A. I cannot ſay.

Q. Take a glance over that paper, and tell us if you recollect it?

A. I think you had better ſhew me the indictment: he certainly is not indicted upon the newſpaper account. (*looks it over*) I think I can ſay that I recollect nothing of it but theſe words, 'The voice 'of the people may be wrong when their underſtandings are per-'verted by prieſtcraft, or darkened by political ſuperſtition, like 'the voice once heard in Jeruſalem of *crucify him! crucify him.*' The ſtriking alluſion that was made by the pannel to that important tranſaction makes me recollect it. As to any thing elſe that paſſed that evening I cannot recollect. I think I came in a little before this part of the ſpeech.

Q. Do you think that was the night on which the motion for a union was canvaſſed ?—A. I cannot ſay.

Q. Did you read the Gazetteer at that time ?

A. Not when they were publiſhed ; I had very little time.

Q. Do you recollect after this, a motion being made in the convention, ſaid to be a motion of Mr. Callander's, in the following words, or words of a ſimilar import (*reads Callander's motion from the indictment*) ?

A. I do not recollect whether I was preſent at that time or not ; I know that ſuch a motion was made by Mr. Callander.

Q. Do you know if it was referred to a committee to make any amendments or alterations ?—A. Yes.

Q. Was there any report ?

A. Mr. Callander was very much enraged that his motion was not adopted preciſely in his own words.

Q. By whom was the report given in ? A. I cannot ſay.

Q. Look at that (*Callander's motion in the minutes*) ?

A. That is my hand-writing.

Q. That regards the motion we are now talking of ?

A. Yes, it does.

Q. Look at that (*Mr Sinclair's amendments*), it ſeems to have been in your poſſeſſion, and marked in your hand-writing ?

A. Yes.

Mr. Solicitor General. That is one of the papers that was found in Sinclair's poſſeſſion.

Witneſs. It was handed to me as aſſiſtant ſecretary.

Mr. Anſtruther. Was you preſent when this amended reſolution was diſcuſſed, and did you continne there during the evening ?

A. I cannot ſay, I rather think not ; for almoſt every evening I was obliged to go away upon the buſineſs of a reſpectable gentleman.

Q. Do you recollect having been preſent at that convention, when there was any propoſal to burn a motion ?

A. I think I recollect it.

Q. Whom was that motion made by?

A. Mr. Sinclair. I oppoſed it, becauſe we had hitherto done every thing with openneſs and candor.

Q. Do you recollect the nature of that motion that was propoſed to be burnt ?

A. I think it related to the calling a convention of emergency.

Q. Had you any idea of the reaſon why he made ſuch a propoſal ?

A. Owing to ſome arbitrary ſtretches of power that had been threatened.

Q. Do you remember a motion made by Citizen Margarot of the following import, " That a Secret Committee of Three and the " Secretary be appointed," &c. (*Reads it from the indictment.*)

Was any reſolution adopted for carrying that into execution? Was there a committee appointed?

A. I believe there was a committee of three or four.

Q. By what name was it called?

A. A Committee of Emergency.

Q. In what caſes was this committee to aſſemble the convention?

A. I believe one was in caſe any illegal attempt ſhould be made to diſperſe the convention. Another occaſion was in caſe of a foreign invaſion; and I heard next day that another was, in caſe the *habeas corpus act* happens to be ſuſpended, or the act for preventing wrongous impriſonment. In any of theſe caſes the convention of emergency were to meet.

Q. How was this convention of emergency to be aſſembled?

A. I know of no particular mode in which they were to be aſſembled.

Q. Do you recollect what number they were to conſiſt of?

A. There were juſt three and the ſecretary appointed on this buſineſs.

Q. You had no idea of the place where the convention were to meet?—A. No.

Q. That was kept ſecret?—A. Yes.

Q. And this, to the beſt of your recollection, was the motion propoſed to be burnt? A. Yes.

Q. You ſaid the reaſon of propoſing that meaſure was, that ſome arbitrary ſtretches of power had been made?

A. No, they had not been made; they were only threatened.

Q. Do you recollect how you generally deſignated each other in the convention?

A. We addreſſed each other in different modes, very often *Sir*, very often Mr. ſuch a thing, frequently *Citizen*; and I recollect farther, that the perſon who introduced the word fellow-citizens amongſt us, was a very reſpectable young nobleman, Lord Daer; and he uſed it ſingly for a long time, like the man who walked near thirty years with an umbrella over his head, and nobody followed his example.

Q. When you were divided into ſmaller parties, what were they called?

A. They were firſt called *diviſions*, and then *claſſes*, afterwards the word *ſections*, was adopted as preferable.

Q. Did you ever uſe the word *ſittings*?

A. Yes; and I ſuppoſe you call this a Sitting of the Court of Juſticiary.

Q. You had in your official capacity an opportunity of ſeeing papers given in; how were they dated?

A. Variouſly, according to the fancy of the writer.

Q. Here is one dated from *Liberty Court*?

A. Very good—but, my lord, what objection have you to the word *Liberty Court*? Is the very *name of liberty* become unpopular?

And here is another dated *Liberty Stairs*. Now, my lord, we have a number of new titles, and new ſtreets, both in Edinburgh and Leith. I have been in *Merchant* ſtreet, where I believe no merchant ever lived, and where I am ſure there is not a ſingle merchant's ſhop; I have been in *Quality*-ſtreet, where not a perſon of quality reſides; I have been in *Princes*-ſtreet, where a Prince never walked; I have been in *Queen*-ſtreet, where her moſt gracious majeſty never ſet her foot. Beſides theſe, we have *St. George's*-ſtreet, *St. Andrew's*-ſtreet, *St. James's*-ſquare, *St. Patrick*-ſtreet,——

Lord Juſtice Clerk. What is all this idle harangue to the purpoſe?

A. My lord, I muſt ſay, it is exceedingly improper, (I beg pardon for ſaying it,) to interrupt a man upon oath. It is ſurpriſing that the words *liberty court* ſhould be found fault with, when we have ſo many new ſtreets named after *ſaints*, although the majority of their inhabitants, ſo far from being ſaints, are in reality of the faſhionable religion, that is the *French religion*, as your lordſhip perhaps would call it, or in plain Engliſh, of no religion at all. It is certainly proper to give a court that had no name, the name of liberty: nothing ſeditious can be inferred from it, any more than any thing ſuperſtitious can be drawn from the ſtreets named after the Roman Catholic ſaints.

Lord Juſtice Clerk. You are not come here to give diſſertations either on one ſide or the other; you are to anſwer to facts, according to the beſt of your recollection, and according to the great oath you have taken, anſwer the facts that are aſked of you?

A. My lord, I wiſh to pay all due reſpect to your lordſhip and this Court, but I conſider myſelf as in the preſence not only of your lordſhip, but alſo as in the preſence of the KING of KINGS and LORD of LORDS; and therefore, as bound by my oath, to ſay every thing that I can conſiſtently with truth, to exculpate this pannel, who I am ſure is an innocent man.

Mr. Solicitor General. Many things you have now ſaid, will, in my opinion, tend to do more hurt than good to the pannel.

Witneſs. Of that, the gentlemen of the jury will judge.

Lord Juſtice Clerk. Mr Solicitor General, it is needleſs to put any more queſtions to this man.

Mr. Solicitor General. I ſhall put no more, my lord.

(The witneſs was then ordered to withdraw.)

Lord Juſtice Clerk. Put him out then. Put him out!

William Roſs ſworn. Examined by *Mr. Burnett.*

Q. What profeſſion are you of?—A. A printer

Q. Was you clerk in the Gazetteer office?——A. Yes.

Q. Who had the management of that paper?

A. Alexander Scott.

Q. Was you a member of the meeting of the friends of the people?

A. Yes.

Q. Was you a member of the convention?——A. Yes.

Q. And of the Britiſh Convention?——A. Yes.

Q. Did you act in any capacity in either of theſe meetings?

A. No.

Q. Do you write ſhort-hand?—A. Yes.

Q. Was you in the uſe of taking down the debates in the convention?—A. I took notes in the convention.

Q. For what purpoſe did you take thoſe notes?

A. For my own amuſement.

Q. Did you not take them for the purpoſe of publication in the paper?

A. I did publiſh an account of them in the Gazetteer.

Q. Then you took thoſe notes for the ſake of publiſhing them?

Lord Juſtice Clerk. Take his own words; he ſays he took them for his own amuſement, and publiſhed them in the Gazetteer.

Mr. Burnett. I believes you have a brother in this town?

A. Yes.

Q. Was he in the uſe of attending the Britiſh Convention?

A. Yes.

Q. Did he aſſiſt occaſionally as ſecretary?

A. I cannot ſay whether he acted as ſecretary or not.

Q. Did he aſſiſt in any ſhape?

A. I have ſeen him taking notes, and writing.

Q. Did he take notes of the debates?——A. Yes.

Q. When you publiſhed the debates in the Gazetteer did you ſtate them as accurately as you could?

A. I cannot ſay for the accuracy of them.

Q. Did you intend to make them as accurate as you could?

A. I did.

Q. Did you reviſe the proof ſheets of the paper?

A. Sometimes I did, I had not always an opportunity.

Q. Are you acquainted with Mr. Gerrald, the pannel at the bar?—A. Yes.

Q. Was he a member of the Britiſh Convention?

A. I have ſeen him there.

Q. Did he take a leading and active part in the buſineſs as far as you ſaw?

A. I cannot ſay that I obſerved him take any leading part more than others.

Q. Did he make ſpeeches?

A. I have heard him ſpeak in the convention.

Q. So far as you recollect, did you take notes of his ſpeech and publiſh them in the Gazetteer?

A. I publiſhed in the Gazetteer ſpeeches of different perſons, and I ſuppoſe Mr. Gerrald's among the reſt.

Q. Did you ever ſee Mr. Gerrald act as preſes?

A. I cannot recollect.

Q. Do you remember a motion made by Mr. Callender in the convention?

A. I think I do; but it is at such a distance of time that I cannot recollect much about it.

Q. Do you remember any debate with regard to a question of union?——A. I think I do.

Q. Do you remember if Mr. Gerrald made any speech upon that subject?

A. I remember his speaking; but what his speech was I cannot say.

Q. Look at that newspaper; is that, to the best of your belief, the speech that you wrote out for the Gazetteer?

A. I cannot say.

Q. This paper is published by you, is it not?

A. It appears to be so.

Lord Dunsinnan. Was it an accurate account? Did you intend to make it inaccurate?

A. I did not intend it, but from circumstances I am sure it is not accurate.

Lord Eskgrove. Did you intend to put any thing in that did not pass?

A. I had taken a cold and did not hear well; and, not being practised in the short-hand writing, I filled it up as I thought suited the occasion.

Mr. Barnett. Do you remember any amendments being made upon that motion of Callender's?

A. I have some recollection of this motion of Callender's.

Q. Was that motion passed as given in by him, or were there amendments? I will read it from your own paper, *(reads it.)* Was you present when these observations were made by Mr. Sinclair?—A. I was.

Q. And did you write that, as far as you recollect?

A. I think I wrote that part of the Gazetteer; but I cannot answer for the accuracy of it.

Mr. Solicitor General. Do you remember any thing about a Convention of Emergency being appointed to meet in certain cases?——A. Yes.

Q. Tell us the cases in which they were to meet?

A. I recollect something of it, from having told it in this Court before.

Q. Was the suspension of the *Habeas Corpus Act* one?

A. It was mentioned.

Q. Was a suspension of the act for preventing wrongous imprisonment mentioned?—A. I believe it was.

Q. Was an invasion mentioned?

A. I don't recollect hearing of that.

Q. Was there any thing about landing foreign troops?

A. I think foreign troops were mentioned.

Q. Was the paſſing an act ſimilar to the Iriſh Convention Bill one?—A. Yes.

William Roſs croſs-examined by *Mr. Clerk.*

Q. Had you acceſs to know that Mr. Gerrald was much indiſpoſed, during the meeting of the convention, and frequently abſent from the meetings?

A. I ſuppoſe Mr. Gerrald's health was not in a very good ſtate; ever ſince I firſt ſaw him I imagined he was not in a very good ſtate of health.

Q. I ſuppoſe you attended theſe meetings pretty regularly, by your taking down the debates in ſhort-hand?

A. I was a good deal there.

Q. Did you obſerve that Mr. Gerrald was frequently abſent from thoſe meeting?—A. It might be ſo.

Q. Tell the jury again the circumſtances on account of which you did not publiſh it as accurately as you wiſhed?

A. I had not ſufficient practice in ſhort-hand to write it accurately; and another thing was, I was juſt recovered from a fever, and had a ſevere cold that I could not hear well.

Q. You mean to ſay, that what you publiſhed, is in ſubſtance the ſame that you heard in the convention, but that a good deal was filled up from ſuppoſition?

A. Yes, a great deal of it was; and I cannot now ſay what part of it was ſo filled up; I filled it up as I thought ſuited the nature of the queſtion.

Q. Did the convention authoriſe the publication of thoſe debates in the Gazetteer?

A. They did not; the convention had no concern with them?

Q. Do you know any inſtance in which it was moved that their proceedings ſhould not be allowed to be publiſhed in the Gazetteer?

A. I heard a debate one evening, it was late when I came in, concerning taking the notes, and I thought it alluded to me.

Q. Do you recollect any thing of a motion returning thanks to Mr. Scott for the publication of the Gazetteer?

A. To the beſt of my recollection I never heard ſuch a motion.

Mr. Gillies. Was you preſent upon the 4th December, 1793, when the following motion was propoſed: "That the moment of "any illegal diſperſion of the preſent convention, ſhall be conſider-"ed as a ſummons to the delegates to repair to the place of meet-"ing, appointed for the convention of emergency, by the ſecret "committee, and that the ſecret committee be inſtructed to pro-"ceed without delay to fix the place of meeting?"

A. I cannot recollect that I was; but I think I have heard of the motion.

Q. Do you think, upon the 4th of December, that Mr. Gerrald

was preſent, or do you remember his being ill at that time, and abſent from the meeting on that account?

A. I cannot ſay; all that I recollect about Mr. Gerrald's abſence is, that I always thought he was in a bad ſtate of health, but when he was abſent or preſent I cannot recollect.

One of the Jury. I would aſk you, in the firſt place, were the convention acquainted with your intention to publiſh their proceedings, previous to publication; and, in the next place, did they ever complain of its being inaccurate?

A. I dare ſay they knew nothing of it previous to publication.

Lord Juſtice Clerk. But did any of them complain to you or Mr. Scott that they were inaccurately taken down?

A. I have already ſaid, I came into the convention one evening, and there was a talk about the notes being taken, and the impropriety of it, and I thought they alluded to me.

Mr. Solicitor General. Did you, upon that, diſcontinue taking notes?—A. No.

Q. You continued taking them till they were diſperſed?

A. The day they were diſperſed I was taken before the ſheriff.

Lord Abercrombie. Did any member, or did the convention, complain that you had not taken them accurately?

A. Yes; one member particularly ſpoke of my inaccuracy reſpecting the number of delegates from Sheffield, and a number of inaccuracies.

Q. What were the others?—A. I cannot recollect.

Q. What was the nature of the inaccuracies?

A. They were inaccuracies in words.

Mr. Gillies. Did Mr. Sinclair ever complain of the general inaccuracy of taking down the debates?

A. I do not recollect any particular perſon.

George Roſs ſworn. Examined by *Mr. Burnett.*

Q. You were clerk in the Gazetteer office?—A. Yes.

Q. You was a member of the Britiſh Convention? A. Yes.

Q. Was you in the uſe of aſſiſting the ſecretary?

A. Yes; I ſometimes aſſiſted the ſecretary, and ſo did ſeveral other perſons.

Q. Was your brother one?—A. No, never.

Q. Is that your hand-writing?

(*Reads*) "Citizen Gerrald appointed chairman," Yes, it is.

Q. Did you ever hear him make ſpeeches in the convention?

A. I have heard him ſpeak in the convention.

Q. Do you remember any debate about a Union.

A. I recollect ſomething about a union of the ſocieties of England and Scotland.

Q. Do you remember Mr. Gerrald ſpeaking upon that ſubject?

A. I don't recollect whether he did or not.

Q. Do you remember a motion made by Mr. Callander about a Convention Bill?

A. Mr. Callander made a motion, that in caſe any motion was made in parliament to bring in a bill, ſuch as the Convention Bill in Ireland, that the convention ſhould meet and petition parliament to prevent it.

Q. Was that motion referred to a committee?

A. I do not recollect.

Q. What was done with it?

A. I do not recollect at preſent.

Q. Do you remember Mr. Sinclair making any amendments upon it?—A. I believe there were amendments propoſed.

Q. By Mr. Sinclair?—A. I cannot recollect.

Q. Were thoſe amendments paſſed?

A. I believe they were, but I am not very certain.

Q. Do you remember any thing about the amendments?

A. No, I do not.

Q. Read that?

A. (*Reads*) " Citizen Sinclair read the amendments upon Citi-" zen Callander's motion," and then comes another perſon's hand-writing.

Q. How much of that is your hand-writing?

A. The three laſt lines.

Q. Do you recollect nothing at all about it?

A. I don't recollect the particulars of the motion.

Q. Was there any thing in Mr. Sinclair's amendment about a Convention of Emergency?—A. I do not remember it.

Q. Did any other body mention it?

A. I remember a convention of emergency being mentioned.

Q. And when was it to meet?

A. In caſe of a bill being brought into parliament ſimilar to that paſſed in Ireland.

Q. In any other caſe were they to meet?

A. In caſe of Heſſians and Hanoverians being landed in this country they were to petition parliament.

Q. In caſe of the ſuſpenſion of the *Habeas Corpus Act?*

A. I do not recollect.

Q. Or of the act for preventing wrongous impriſonment?

A. I don't recollect.

Q. Or in caſe of a foreign invaſion? A. I do not recollect.

Q. Read that? A. (*Reads*) " Citizen Gerrald, in a very ener-" getic and animated addreſs, expreſſed his happineſs at the mo-" tion paſſed."

Q. That is your hand-writing? A. Yes.

Q. Do you know the reaſon of that blank being left in the minutes?

A. I cannot tell that, but if you would have allowed the con-

vention to ſit and publiſh their minutes, it would have been filled up.

Lord Juſtice Clerk. Remember you are upon your oath?

A. I know that very well; I come here to tell the truth. All I know about it is, it muſt either have been left to be put in at a future period, or, from hurry, or ſome reaſon, it could not be put in at that time.

Mr. Burnett. Were the ſpeeches made in the convention publiſhed in the Gazetteer?

A. Yes, what my brother took down.

Q. Did you ever read them in the Gazetteer?

A. I have read them, but I have very little time to read.

Q. Did there appear to you to be any thing ſtated in the Gazetteer that you did not hear in the convention?

A. If I had read them particularly over, I perhaps could have anſwered to that.

One of the Jury. Who corrected the ſpeeches for publication?

A. I believe my brother, at leaſt I ſuppoſe ſo.

Q. Did you ever correct them yourſelf?

A. I don't know whether I ever did or not, perhaps in reading over the proof I might.

Mr. Burnett. Here is a paper with "*Vive la Convention!*" and "*Ca Ira*, George Roſs;" is that your hand-writing?

A. Yes.

George Roſs croſs examined by *Mr. Gillies.*

Q. Thoſe words *Vive la Convention* and *Ca Ira* were written by you at one of the ſections? A. Yes.

Q. Was Mr. Gerrald ever preſent at this ſection? A. No.

Q. Did the convention authoriſe theſe expreſſions?

A. No, they never did. I believe Mr. Gerrald never belonged to any of the ſections.

Q. How came you to put theſe expreſſions?

A. There was no harm in that.

Q. Was it a fancy of your own?

A. It was, without any orders, juſt a fancy of my own.

Q. Was any thing of that kind ſtated in the minutes of the convention?

A. They were written by me before either the convention or the pannel could know any thing of them.

Q. Were they afterwards read over and approved of by the convention?

A. There were ſeveral members thought them very fooliſh.

Mr. Solicitor General. But they were read over and lodged with the ſecretary as official papers? A. Yes.

Mr. Gillies. Were theſe expreſſions, *Vive la Convention* and *Ca Ira*, read over to the convention, or only the report from the ſection?

A. It depended upon the perſon who read them.

Lord Henderland. When they were read, was the perſon reading in the habit of concealing any part of it?

A. I cannot ſay.

Mr. Burnett. Here is a paper, "firſt year of Britiſh liberty, one "and indiviſible, by the appointment of the rabble of Sans Culottes."

Mr. Gillies. Was the pannel concerned in writing that paper?

A. I cannot ſay.

Mr. Burnett. Were not the whole convention divided into ſections? A. Yes.

Q. At what time did the ſection meet, of which you was a member? A. In the forenoon.

Q. And they made their report in the evening? A. Yes.

Mr. Gillies. Did you ever ſee Mr. Gerrald at any of theſe ſections? A. I never ſaw him at one.

(*The declaration of the pannel was then read.*)

Mr. Solicitor General.

Gentlemen of the jury, you are now about to exerciſe the moſt important function that private perſons can be called upon to exerciſe;—to determine with regard to the guilt or innocence of the unhappy perſon who ſtands at this bar; and were the caſe at all difficult, in proportion to its importance, I ſhould conſider your ſituation, gentlemen, to be at this moment of a very hazardous and a very delicate nature. But you are not, upon this occaſion, obliged as jurymen ſometimes are, to wade through a difficult proof through a variety of contradictory evidence, to balance depoſition againſt depoſition, and from a long train of circumſtances, with a trembling ſtep, to inveſtigate where the truth lies. This, gentlemen, is a province which often falls to the lot of jurymen; and to be ſure, calls for the utmoſt attention with which the human mind can be veſted. This is a caſe which commonly happens, where thoſe who break the laws of their country truſt to being able to conceal the offence of which they have been guilty for impunity, and of courſe it muſt require a difficult, a laborious inveſtigation.

Gentlemen, the preſent caſe is of a different kind; the offence charged againſt this pannel were of too public a nature; they truſted not to concealing the truth for impunity, but to circumſtances of futurity, by which they hoped to ſet criminal juſtice at defiance; but their hopes have been defeated, and I have this day to lay before you a proof ſo complete as that which I ſhall have the honour of ſtating to you.

Gentlemen, it will be neceſſary for me to take up more of your time than at firſt might be imagined, becauſe the moſt material part of the proof you have not yet heard; it lies not ſo much in the parole evidence that has been given, as in the written evidence lying upon the table; and, before I enter upon the particular parts of the evence, I believe it will be proper to lay under your view a gene-

al ſtatement of the written evidence which has been adduced, and he manner in which it has been authenticated ; doing it in this man-er in the beginning of what I have to ſay, will ſave repetitions, and vill ſave you the trouble of again and again recurring to the ſame natter.

Gentlemen, the written evidence, upon which I chiefly rely, con-ſts, in the firſt place, of the minutes of the convention, (call it ſcroll r what you pleaſe) made up by the ſecretary of the convention, and y his aſſiſtants. I ſay, gentlemen, this important document, fortu-ately for the ſake of public juſtice, has been recovered out of the ands of the ſecretary, and is now lying upon the table. Gentlemen, vhen it was ſeen that the audacity of the Britiſh Convention had ome to ſuch a height that it was impoſſible for the magiſtrates and fficers of the law not to take meaſures againſt them, one of the firſt eps reſolved upon was, to take proper meaſures for getting hold of the vritten documents in Skirving's poſſeſſion, and by thoſe proper mea-ures, ſo taken by the officers of the law, has this evidence been ſe-ured, and now lies before you, completely authenticated. The au-nentication of it is perfectly complete ; you have the evidence of the erſons who ſeized it in the poſſeſſion of Mr. Skirving ; you have them raced to the ſheriff-clerk's office, and there you have them invento-ied and ſigned in the preſence of the parties ; and therefore I ſhall old theſe minutes as completely authenticated, and ſhall have occa-ion to refer to them again and again in ſupport of the charge I am o maintain.

You have, in the ſecond place, the evidence of the papers recover-d out of the poſſeſſion, partly of the pannel, and partly of his compa-ion Margarot, which were got by Lyon, and opened by the key out f Margarot's pocket, in the ſheriff clerk's office, all which now lie pon the table completely authenticated.

In the third place, you have the writings found in the poſſeſſion of inclair, by Lyon the meſſenger, at the time he attended the execu-ion of the warrant, put into a napkin, and by him carried to the ſhe-iff-clerk's office, not inventoried that day, becauſe Sinclair was in-liſpoſed, but inventoried two days after ; they are alſo completely uthenticated. I am ſure, from the nature of the caſe, it is impoſſi-le any alteration could have been made, and among thoſe papers ou will find ſome very important and very deciſive documents of evi-lence indeed. And,

In the laſt place, if it may be called written evidence, there is the vidence ariſing from thoſe numbers of the Gazetteer which are alſo roduced. It is very true, that in general, accounts given in a newſ-aper cannot be received before a jury ; but you will obſerve, this s a newſpaper in a very particular ſituation, publiſhed by a member f the convention who is now under ſentence of fugitation on that ac-ount, and recognized by the convention itſelf. Gentlemen, it may e neceſſary to point out to you in what way this was recognized by

the convention, as giving a fair account of their proceedings. I see there appears in the minutes many resolutions about supporting the Gazetteer, as a paper of their party; and, in one of the minutes, a person of the name of Colin Nory having applied for a copy of the minutes, the answer returned to him is this, that it will be unnecessary, because they will find them in the Gazetteer. I say then, you cannot have a doubt but that it contains as fair and accurate account as you can expect; at least accurate enough for all the purposes for which I shall read them.

Now, gentlemen having thus stated and given you some account of the evidence which I have to rely upon, I shall now proceed to consider the charge brought against this pannel, and the evidence by which I say every part of it is most completely and without contradiction substantiated. The general amount of the charge comes to this, that in the months of November and December last, a set of seditious persons assembled in this city, and assumed to themselves the name of "the British Convention of the Delegates of "the People, associated to obtain Universal Suffrage and Annual "Parliaments." That such a meeting was held in this city is a fact too notorious and too well remembered by every one of us to admit of contradiction; that this pannel was a constituent member of this meeting is equally clear and indisputable, having come here by delegation from one of the societies in London, I believe the corresponding society; but it matters not which, and that he attended and took an active part in the resolutions of those meetings will not be disputed by himself. I believe that he took an active part, and I must say, that from the talents which this gentleman has shewn, and from the character given him by his counsel, I have no doubt that his abilities and education qualified him to take a very distinguished part in the convention, as one of the leaders and prime movers among them.

Gentlemen, I say, if nothing more had been proved against this pannel than his taking an active part in the proceedings of a meeting of this kind, upon that I would maintain that he is guilty of sedition; because I say the meeting itself, from the very nature of it, and the part he took in it, is sufficient to constitute a charge of sedition against him. For what was this meeting? What is the name that they assume to themselves? They call themselves "the "British Convention of the Delegates of the People;" plainly conveying an idea that they were the representatives of the great body of the people at large, and endeavouring to vest themselves with legal authority. I say this alone is seditious and contrary to law: the people of Great Britain are represented by their delegates in parliament; there their representation lies, and an attempt of any other body of men to call themselves the representatives of the people is seditious--is illegal. A convention, it is veryt rue, is not a name so entirely new in Scotland as might have been imagined; a convention was a legal name in Scotland, given to a legal body,

invested by the sovereign with parliamentary powers, in some degree, at least with powers very little short of those vested in the parliament. We know it was a convention of the delegates of the people in Scotland which accomplished the Revolution: at that period, the people of Scotland alarmed at an indignant invasion of their rights, seeing their privileges in church and state invaded and threatened with the establishment of a despotic power; at that period, that memorable period to which we all look back, at least in name, with reverence, at that period, the people of Scotland, all that was great and good and wise in this country, assembled; at that time we needed not delegates from corresponding societies in London, there was then no occasion for inflammatory hand-bills and two-penny pamphlets; the people of Scotland know when their rights are invaded; at that time their constitution was attacked, and a despotic power threatened them; at that time a convention met of every thing great, respectable, and good; and they established the principles of the *Claim of Rights*, and provided against any encroachment upon that constitution, by such guards as appeared to them to be perfectly sufficient.

But, gentlemen, what is the object of this British Convention of the delegates of the people? We are told it is to obtain universal suffrage. I say, gentlemen, that universal suffrage is not only contrary to, not only not authorized by the constitution of Great Britain, but a complete subversion of that form of government under which we live, and which was established at the time of the Revolution. At that period our forefathers published to the world their ideas of government in the *Claim of Rights*; they declared openly and manfully what they thought sufficient to make them a free and a happy people, and to support the constitution. And, give me leave to say, and tell many of those people who talk so loudly of the *Claim of Rights* which they never read, that every right then stipulated for by our forefathers, every title of them is at this moment enjoyed by the poorest wretch that breathes in Scotland. If the gentleman can shew me one single instance in which the *Claim of Rights* is invaded, I will this moment sit down and give up the argument. But we are told that universal suffrage is a speculative opinion with respect to government; that wise men differ upon it, and that it is a part of the freedom which we enjoy to have the liberty of fairly discussing every political subject, and this among the rest. Gentlemen, this is a proposition which I will take the liberty to deny. I will take the liberty to say, that the maintaining the freedom of discussion of political questions to that length which is subversive of the constitution is most illegal and most unconstitutional; for, what is the situation in which we all stand? We are not here in a state of nature, we are not savages, and now for the first time to chuse a constitution for ourselves; not like a man shipwrecked upon a desert island, free to chuse any mode of government we please. No; we are all of

us born ſubjects of the Britiſh empire, ſubjects of Great Britain, which is the moſt ineſtimable bleſſing, and the moſt ineſtimable birth-right that can be beſtowed upon us. From our birth we owe allegiance to the conſtitution eſtabliſhed at the Revolution; we are not to venture to ſay that another conſtitution would do better in its place, I ſay, by law we owe allegiance to it from our birth, and by law we are bound to prevent it being encroached upon, and that no body of men have a liberty to ſay we will indulge in ſpeculation, and there is no harm in ſpeculation, I ſay, that ſubjects of Great Britain, born under allegiance to the conſtitution, have no ſuch liberty. Now, gentlemen, I aſk was univerſal ſuffrage any part of the conſtitution eſtabliſhed at the Revolution? Was it ever ſo much as thought of? Was it ever ſo much as mentioned among thoſe rights which our anceſtors have eſtabliſhed? Not a word. The patriots of thoſe days to whom we are ſo much indebted, had too much good ſenſe not to ſee that any ſcheme of that kind was inconſiſtent with that ſpecies of government, compoſed of monarchy, ariſtocracy, and democracy, which was then eſtabliſhed; they ſaw that any ſcheme of that kind would be inconſiſtent with it, and that it would be dangerous and chimerical: but what their good ſenſe led them to ſee and to ſhun we are able to judge of upon much ſurer grounds. This topic is no longer a matter of theory, in which men will indulge, as they pleaſe, their different opinions; it is a matter which has been brought to the teſt of experience, in the only caſe in which it has been tried ſince the world began (for the Anglo Saxon government knew of no ſuch thing): one experiment has been tried, in the government of France, and the reſult of that experiment I ſhall not mention; it is a ſubject from which I turn aſide with horror and deteſtation, and yet this is the time after this experiment has been tried, after it has produced thoſe horrible miſchiefs in a neighbouring country, which we cannot think of without ſhuddering, this is the very time when this Britiſh Convention will lift up their own mad opinions againſt the experience of ages, when they ſay in ſpite of the Revolution, in ſpite of the principles then eſtabliſhed, and in ſpite of what has happened in France, we will obtain this univerſal ſuffrage, which, if obtained in any country in the world, would juſt produce the ſame conſequences, or nearly the ſame that it has done in that unhappy ill-fated country which I juſt now alluded to.

Gentlemen, I ſhall only ſuppoſe, that in place of aſſociating themſelves for the purpoſe of obtaining univerſal ſuffrage, as they tell us, ſuppoſe they had entitled themſelves an aſſociation, in order to obtain a demolition of kingly power and nobility; to be ſure they might have told us it was mere matter of ſpeculation, that many good men had thought we were much better without kings and without nobles; but I am ſure, living in this country and under the conſtitution of Great-Britain, any propoſition of that kind maintained by any body of men, would be illegal and ſeditious.

Gentlemen, having ſhewn you that the object of this aſſociation was illegal, let us now conſider the means which they took to accompliſh their object, which include the different acts of ſedition charged againſt this pannel, becauſe every one and all of thoſe ſteps which they took, toward obtaining this favourable object, are groſs and aggravated inſtances of ſedition.

Gentlemen, the title which this meeeting aſſumed to itſelf I have already ſpoke of; and which was, I apprehend, in itſelf illegal, as calling themſelves the delegates of the people, that is to ſay, the delegates of the people at large.

But the libel further ſtates, 'and did in the whole form and manner of their procedure, as well as in the principles they avowed and propagated, clearly and unequivocally demonſtrate, that their purpoſes were of the moſt dangerous and deſtructive tendency, hoſtile to the peace and happineſs, and tending to ſubvert the conſtitution of this realm, imitating in the form and tenor of their proceedings the convention of France, the public and avowed enemies of this country, and with whom Great-Britain then was and ſtill is at war, the members calling each other at their meetings by the name of Citizen, dividing themſelves into ſections, receiving reports from ſaid ſections,' and ſo on. Gentlemen, for evidence of this, beſides the teſtimony of the witneſſes that was delivered in your preſence, I only refer you to the minutes of the convention which will be lying before you when you deliberate upon this ſubject. Turn to every page, and you will ſee there is no part of it the language of Great Britain, but all of it this new fangled jargon which has been accompanied with ſo much confuſion. We find Committees of Finance, of Organization, Primary Aſſemblies, and ſo on. You will find, by looking at the minutes, or theſe reports of ſections found in the poſſeſſion of Skirving, the moſt complete evidence of this; and I believe there is not a ſingle phraſe of miſchief, conſecrated to every thing that is bad in France, but has been adopted by the members of the Britiſh convention.

Gentlemen, it is very true, that this mode of imitation is not, by the law of Scotland, a crime in itſelf, nor do I charge it as ſuch; it is only mentioned in the libel as a circumſtance of evidence, in order to ſhew to the jury the general views and intentions of the parties. There is nothing wrong in the word convention, there is nothing wrong in organization, or in liberty and equality; there is nothing wrong in theſe words nor any other in the whole Engliſh Dictionary; it is the improper aſſociation of them which I apprehend here, go to mark the dark and dangerous deſigns which theſe people have not been able to conceal. Prudence might have told them, that whatever alterations they meant to make in this country, they ſhould not have borrowed theſe expreſſions of France; but the fury of reformation was ſo mad, and ſo rapidly did the torrent run, that they were always ſpeaking out the beloved object they had in view;

and thus we have Committees of Finance, of Inſtruction, of Organization, and all the reſt.

Gentlemen, you were told the other day, by a very ingenious counſel on the part of Mr. Gerrald, that this imitation of French manners was by no means new in this country; that ſomething of the ſame kind had taken place before, and nobody ever found fault with it. It is true, we may all remember when all the fopperies of the faſhions of France were our objects of imitation; but did they endanger the conſtitution of this country? Was it ever pretended that they were to give laws to Britain, and alter her conſtitution? Did the taylors, the milliners, or the frizeurs ever pretend to legiſlate for this country? Did they ever pretend any thing but to make our coats or powder our heads? That ſpecies of imitation may be ridiculous, as it certainly was; but it was perfectly innocent; it had not the ſmalleſt reſemblance to that of which theſe gentlemen have been guilty; it no more reſembles it than if a man ſhould chuſe to pleaſe himſelf with the diverting tricks of a monkey; this might be innocent, but it does not follow that in ſociety he would be allowed to imitate the ſavage ferocity of a tyger; the one may be ridiculous, but the other is deteſtable and dangerous: it is on that account, and not becauſe it was an imitation of French manners, that it is charged as pointing out the miſchievous views and intentions which actuated the minds of theſe people.

Gentlemen, the libel next proceeds to ſtate ſeveral ſpeeches made by this pannel, who, by all accounts, appeared to have a talent for public ſpeaking, of which you in all probability will ſoon have a ſpecimen; and he certainly has a talent for compoſition; of that we can all judge. It is ſtated, that on the 21ſt of November, he made the ſpeech which is engroſſed at length in the libel, and which has been read before you this day. Gentlemen, the evidence that he made the ſpeech does not reſt ſolely on the teſtimony of the Gazetteer, although even that I ſhould have thought ſufficient evidence to eſtabliſh the general import and ſubſtance of the ſpeech; becauſe, I will read to you an abridgment of that ſpeech, taken from an authority which the gentleman will not pretend to queſtion, I mean the minutes of the convention, which is juſt as bad, or rather worſe if any thing, than that publiſhed in the Gazetteer: (*reads from the minutes*) 'Mr. Gerrald obſerved, that whatever difference of opinion might 'exiſt within thoſe walls, we can never forget that our friends and 'our enemies are in common, and that our object is equally the ſame; '—he took a view of the means we ſhould take to gain our object—'entered fully into our right to Annual Parliaments—minutely in-'veſtigated the Principles of Government—aſſerted that the end of 'all government is the good of the governed,' which is certainly 'very true—'that if money is taken out of our pockets, it ſignifies 'not whether it is by the robber on the heath, or the monarch on 'the throne—made many remarks on the Revolution-ſettlement, 'and the benefits derived from the Revolution, but clearly demon-

' ſtrated that they are now totally taken away,' which agrees with the words in the Gazetteer, ' that the preſent form of government ' no more reſembles the Revolution than a dead putrid carcaſe does ' a living body.' Now, if you compare theſe together, you will find, that this ſhort account is a moſt faithful and accurate abridgment of Mr. Gerrald's ſpeech, as ſtated in the Gazetteer, which I ſhall not trouble you with reading again--there are juſt two ſingle paſſages I beg leave to call your attention to: ' It was juſtly ob- ' ſerved by Citizen Callander, that, ſoon after the union of the ' crowns of England and Scotland, the people of both countries ' were deprived of ſome of their moſt valuable privileges. It was ' from that period that the greateſt encroachments began to be made ' on public liberty, but, if that union has operated to rob us of our ' rights, let it be the object of the preſent one to regain them. If ' the event exiſts for our ſhame, as it has exiſted for our chaſtiſe- ' ment, let it alſo exiſt for our inſtruction.'

Now, Gentlemen, I here ſay, that that is a moſt abominable libel upon the union of the two kingdoms, one of the moſt auſpicious events that ever happened, to ſay, that ' from that period, the greateſt encroachments began to be made upon public liberty, is an aſſertion that is moſt falſe and ſeditious; for ſince that period there have been no encroachments upon public liberty, and no individual citizen has been deprived of any of his moſt valuable privileges.

Gentlemen, the only other paſſages that I ſhall take notice of in this ſpeech is this: ' It has been obſerved, that the Revolution of ' 1688 did not produce the advantages which might have been ex- ' pected from ſuch an event. It is true that, at the Revolution, ' univerſal ſuffrage was not diſpenſed to the people with that libe- ' rality which it ought to have been; but ſtill, the preſent form ' of government, in my opinion, no more reſembles the Revolu- ' tion, than a dead putrid carcaſe does a living body:' which is juſt ſaying in other and more florid words what is ſtated in the minutes, that the bleſſings obtained by the Revolution-ſettlement were now totally done away.

Gentlemen, the next branch of the indictment which we ſhall proceed to, which is the moſt material and the moſt inexcuſable of the whole, which carries the deepeſt guilt againſt this pannel, is what relates to Citizen Callander's motion, the proceedings of the convention which followed upon it, and the ſhare which this pannel took in its proceedings.

Gentlemen, in order that you may have a complete view of this important branch of the cauſe you have to try, I ſhall ſtate from the minutes, progreſſively, the hiſtory of the proceedings which took place with regard to this motion of Citizen Callander's. The buſineſs originated in a motion made by Citizen Callander, a gentleman now under ſentence of fugitation, for the part he took in this buſineſs; he did not dare to ſtand his trial. Citizen A. Cal-

lander moved, 'That in case the minister bring into the Commons 'House of Parliament a motion for a Convention Bill, it shall be 'noticed immediately to the delegates.' This is the general substance of Mr. Callander's motion, as taken down in the minutes of the convention, upon the 25th of November; and upon the 27th it is debated in the convention. 'Mr. Callander's motion being 'then taken under consideration, amendments were proposed by 'Citizens Downie, Sinclair, Margarot, and Gartley. Citizen Margarot was for adopting the spirit of the motion, but thought it 'more expedient to postpone it till the conclusion of the convention 'business, and moved that a committee, consisting of the mover, 'seconder, and those who had moved for amendments, be appointed to draw up a motion that may probably meet the ideas of all. 'After some consideration it was agreed, upon the motion of Mr. 'Callander, that the sense of the house should be taken, first upon 'the spirit of the motion, secondly, upon the words of the motion, 'and thirdly upon Mr. Margarot's motion. Upon the first motion 'it was carried unanimously to adopt the motion as to its spirit; 'secondly, by a great majority not to adopt the words of it; and 'thirdly, that the amendments referred to a committee as above.' So that you see, gentlemen, the result of this debate upon Callander's motion is to adopt the spirit of it, but with respect to amendments to refer it to a committee.

Then, gentlemen, let us see what the minutes say further upon this subject: "Upon the 28th of November the motion is again taken into consideration, and the report of the committee, to whom it was referred to make the amendments upon Callander's motion, is brought up: "Citizen Sinclair read the amendments upon Citizen Callander's "motion, as agreed upon by the committee, and it was agreed upon "the motion of Citizen Blank, that the house should resolve itself "into a committee for its mature consideration. In the course of "the conversation, Citizen Brown gave a history of the *Habeas Corpus act*. After an excellent discussion of the question, pertinent remarks, and amendments the convention was resumed, and the whole "as amended, being read over, the members stood upon their feet, "and solemnly and unanimously passed the resolution as follows."— After this there is a blank of a page and upwards, which I shall afterwards fill up to your satisfaction: in the mean time I shall go on with the minutes.

"Citizen Gerrald in a very energetic and animated address, expressed his happiness at the motion passed; Citizen Brown followed "him in a manly speech, and proved the influence of the executive "government over the parliament; Citizen Margarot then read, and "proposed the following motion: That a Committee of three and the "secretary, be appointed to determine the place where such convention of emergency shall meet, that such place shall remain a secret "with them, and with the secretary of the convention, and that each "delegate shall, at the breaking up of the present session, be en-

" truſted with a ſealed letter, containing the name of the place of " meeting; this letter ſhall be delivered unopened to his conſtituents, " the receipt of which ſhall be acknowledged by a letter to the ſecre- " tary preſerved in the ſame ſtate until the period ſhall arrive, at " which it ſhall be deemed neceſſary for the delegate to ſet off. This " motion was ſeconded by Citizen Moffat and paſſed unanimouſly." Now, gentlemen, let us go back to the blank, which I ſhall now be able to fill up, as I believe, to the full ſatisfaction of every man who hears me; the blank is to be filled up by the amended reſolution propoſed by Sinclair, which amended reſolution is one of the papers, two copies of which were found in Sinclair's poſſeſſion when he was apprehended by Lyon, and carried to the ſheriff-clerk's office, there inventoried, and now lie upon the table: one of them appears to be a good deal blotted and interlined, which is entitled at the back, in the hand writing of Mr. Aitcheſon, "*Mr. Sinclair's amendment of* " *Mr. Callender's motion,*" and that important paper I muſt now beg to read to you, fully authenticated as it is: " Reſolved that the " following declaration and reſolutions be inſerted at the end of your " minutes." And you will now attend to a paragraph in the Gazetteer, which Roſs took down, and which he ſays he does not recollect, but which you have in the minutes, in the Gazetteer, and in the indictment. " Reſolved, that this convention, conſidering the " calamitous conſequences of any act of the legiſlature which may " tend to deprive the whole, or any part of the people, of their " undoubted right to meet, either by themſelves or by delegation, to " diſcuſs any matter relative to their common intereſt, whether of a " public or private nature, and holding the ſame to be totally incon- " ſiſtent with the firſt principles and ſafety of ſociety, and alſo ſub- " verſive of our own and acknowledged conſtitutional liberties, do " hereby declare, before God and the world, that we ſhall follow the " wholeſome example of former times, by paying no regard to any " act which ſhall militate againſt the conſtitution of our country; " and ſhall continue to aſſemble, and conſider of the beſt means by " which we can accompliſh a real Repreſentation of the People, and " Annual Election, until compelled to deſiſt by ſuperior force.

" And we do reſolve,

" That the firſt notice given for the introduction of a Convention " Bill, or any bill of a ſimilar tendency to that paſſed in Ireland, in " the laſt ſeſſion of their parliament;

" Or any bill for the ſuſpenſion of the Habeas Corpus Act, or the " act for preventing wrongous impriſonment, and againſt undue de- " lays in trials in North Britain;

" On in caſe of an invaſion;

" Or the admiſſion of any foreign troops whatſoever into Great " Britain or Ireland; all, or any one of theſe calamitous circumſtan- " ces, ſhall be a ſignal to the different delegates to repair to ſuch " place as the ſecret Committee of this Convention ſhall appoint; and

" the firſt ſeven members ſhall have power to declare the ſittings
" permanent ; and twenty-one ſhall conſtitute a convention, and
" proceed to buſineſs.

" The convention doth therefore reſolve, That each delegate,
" immediately on his return home, do convene his conſtituents,
" and explain to them the neceſſity of electing a delegate, or dele-
" gates, and of eſtabliſhing a fund without delay, againſt any of
" theſe emergencies, for his or their expence ; and that they do in-
" ſtruct the ſaid delegate, or delegates, to hold themſelves ready to
" depart at one hour's warning " This is the reſolution which, even the audacity of the convention dare not inſert in the minutes, and I am not ſurpriſed at it—a more daring inſult to the eſtabliſhed government of the country never exiſted. Gentlemen, upon the firſt part of it, an attempt, or ſomething like one, was made by the counſel to quibble away the import of it, that they would pay no regard to any act of the legiſlature ; that is, that as ſoon as ſuch a bill was brought in, they would meet, and endeavour to prevent it from paſſing ; but if you attend, you will ſee this could not be the meaning of it, it is, as plain as words can make it, a reſolution upon the part of theſe gentlemen, to bid defiance to the legiſlature of Great Britain. That we who know better than you, will oppoſe force to force, and inſtead of paying regard to it, will make it a ſignal for us to hold a Convention of Emergency, to be held at a place unknown to the parties themſelves. to be fixed by a ſecret committee, and that each of the delegates ſhall be entruſted with a ſealed letter containing the name of the place of meeting. This is one occaſion of the meeting of the convention of emergency, but it is not the only one there is another which well deſerves your ſerious conſideration ; one of the caſes ſpecified in which this convention were to meet, in a place unknown to any but a choſen few of their own number, is in caſe of an invaſion. Gentlemen, this is not entirely a fancied caſe ; we all know that an invaſion of this country has been projected, was then and is yet in agitation, (when it will be attempted God only knows) by its moſt inveterate foes, not as in former times proceeding from a rivalſhip in arms—a conteſt of ambition—no, the object of the invaſion as declared by themſelves, is no leſs than to annihilate the Government of Great Britain ; to cut it up as a monſtrous piece of tyranny, to deſtroy that favorite of liberty and of wiſdom that was reared by our anceſtors, and which has ſo long been the glory and pride of every Briton and the admiration of mankind ; and which, for that reaſon, has been ſo long the envy of our foes. This conſtitution, in the preſervation of which is involved every privilege, every public right, and I will add to it every domeſtic comfort, is by this invaſion to be ſwept away at once ; a calamity which, if it ſhould happen (which I truſt it never will, but no thanks to thoſe gentlemen) that compared with which, what is there in the hiſtory of man to equal it ? Of all the calamities, of all the puniſhments that ever were inflicted upon a nation, if the whole vials of divine vengeance were to

be exhauſted upon any people, or all the calamities that can proceed from the convulſions of nature, or peſtilence, or ſtill more deſolating famine; I ſay the whole of theſe calamities compared with a ſucceſsful French invaſion, I might for my own part, conſider as viſitations of kindneſs and compaſſion; and yet this is one of the caſes which their reſolution provides for. This is the criſis, this is the moment which, if ever it ſhould occur, and it may, God knows how ſoon, when the power of Britain muſt be exerted. Let me ſuppoſe the event, that the French aſſembled near our coaſts; ſuppoſe them (which God forbid) either to vanquiſh Britain or defeat her vigilane and arrive, and prepare to land—in that awful moment, when the armies of Britain, I truſt, under their ſovereign ſhall muſter upon the coaſt to repel the foe, ſhall carry with them the wiſhes of every good citizen, every thing that is wiſe and good in the country giving every aſſiſtance in their power; in that dreadful hour where are we to find the Britiſh Convention? Do we find them aſſembling under the banners of our conſtitution? No, they tell us, that it is their reſolution, that they have declared before God and the word, that in that hour they will, conſpirator-like, ſlink into a corner, ſhun their fellow-citizens, form a body of their own, and meet in a place where they themſelves know not, and is only to be unfolded by the opening of a ſealed letter when the hour arrives.

Gentlemen, though the mind of man can only be viewed by that All-ſeeing Eye which can pierce into it, yet a human tribunal can judge of intentions from actions; and taking the actions of thoſe men, as proved by the moſt authentic documents, they were dark, they were dangerous.

Gentlemen, it has been ſaid that it might be their intention to unite themſelves to repel a foreign—to repel an invaſion. Had that been their intention, would they have choſen to ſecret themſelves from the reſt of their countrymen? Were they ſo mad (and mad I admit they were in many things) as to think that a hundred men, or whatever their number was, were ſufficient to repel an invaſion? No; to a foreign foe, ſuch a force as theirs muſt appear contemptible. It is true, they were formidable, not by their numbers, nor by their arms, but they were formidable by being an enemy in our own boſoms. This, this alone made them formidable. As to its being their intention to repel the invaſion, it is too eccentric, I am ſure, to gain credit from any man.

Gentlemen, what mighty motives had this convention to ſtand forth to repel this hoſt coming againſt us? Suppoſe the period arrived, they behold the power of Britain aſſembled under its lawful ſovereign; there they ſee a king, a government which they conſider as no better than a dead carcaſe; there they ſee an ariſtocracy which is hateful to them. Do they ſee univerſal ſuffrage? No; it is that which can never be allowed by the conſtitution of Britain. But what is the caſe? They meet in a dark place. What do they meet for? To obtain univerſal ſuffrage. What do

the invaders offer them? Univerſal ſuffrage—you ſhall have it from the pure fountain head, from the ſource of every thing that is wiſe of political inſtructions, from the fountain head, the Convention of Paris. You ſhall have no ariſtocracy—you ſhall have no religion, if you pleaſe; but of that I ſay nothing—you ſhall have primary aſſemblies—you ſhall have every one of theſe things which you appear to be ſo remarkably fond of. Gentlemen, it is unneceſſary for me to carry the matter ſo far as to ſuppoſe that this pannel or the other members came to the dark, the deſperate, the wicked reſolution of joining the foes of Britain, in caſe of an invaſion, it is by no means neceſſary. But ſuppoſing they meant to go no further than what they declared, to meet in a ſecret place, unknown to the government of this country, perhaps to negociate with a foreign enemy; but in either way their intention was dark, it was wicked, it was criminal. Gentlemen, with regard to many of the members, I do in charity believe, that they concurred in this reſolution, not ſeeing the precipice on which they ſtood, unconſcious of the end to which it tended. But I am ſorry to ſay that is an apology that will not do for Mr. Gerrald; he is a man who ſupports this reſolution, and follows it up by an inflammatory ſpeech; it is impoſſible that he could be ignorant of the point to which it led; it is impoſſible he could be innocent, he muſt be more or leſs criminal, and the ſmalleſt criminality that can be aſcribed is very great indeed, far more than ſufficient to ſupport the charge of ſedition which I have made againſt him.

Now, gentlemen, the next thing is the ſpeech of which the minutes very ſhortly ſay, "Citizen Gerrald, in a very energetic and "animated addreſs, expreſſed his happineſs at the motion paſſed." Gentlemen, I ſhall only read one or two expreſſions in it, and you will attend to the occaſion upon which it was made; it was made juſt after the convention had paſſed this ſolemn reſolution and declaration before God and the world; in this ſtate, when their minds were in this ſituation, in a ſtate of avowed hoſtility, Mr Gerrald roſe up and made a ſpeech, adding fuel to the flame, he ſays, 'Though I 'could not get a copy of this bill, the heads of which I have read are 'ſufficiently explanatory of its deteſtable principles; and I hope the 'meaſures which have been adopted this night will convince the mi-'niſter, that we are determined to guard againſt every attempt that 'may be made to deprive us of our rights. And though by ſome it 'may be thought a bold, by ſome a daring meaſure, yet it will be 'found the beſt for ſecuring the peace of our country. For if ſuch 'a law were ſuffered to paſs, if men were not allowed to utter their 'complaints, a number of fierce and rancorous paſſions would ariſe, 'and we would ſeek to appeal to that laſt terrible deciſion, the event 'of which is uncertain, but which God and nature allows.'

'If the ſervility of the people had been leſs; if they had dared 'to meet, and, in place of murmuring, to have told their rulers 'that there was danger in ſeeking to deprive them of their liber-

'ties, we would not have had to adopt this reſolution to-night; 'but when I ſaw the calm deliberate countenances of all preſent, 'and the ſolemn manner in which it was paſſed, I was convinced 'that it would not only be a reſolution of words, but a rule of ac-'tion."

Gentlemen, upon the reading of this ſpeech, you will conſider that it was addreſſed to a number of perſons who had, a few minutes before, come to the reſolution of flying in the face of the legiſlature, which is ſo plain that I ſhall ſay no more about it.

Gentlemen, I have now gone through the charges in the indictment, and I think I have eſtabliſhed every one of them in ſuch a way as muſt have given you ſatisfaction. The only part of the charge that remains is, that at the time the magiſtrates came to diſperſe them, even after that Mr. Gerrald again takes the chair, and would not leave it till he was turned out; they declaring that the diſperſion was of no conſequence, for they had declared themſelves permanent. Upon that it is unneceſſary to ſay any thing, becauſe you heard theevidence was given upon it; and you will give it ſuch attention as you think proper.

Thus I have endeavoured to lay before you what appeared to me to be the moſt material parts of the charge againſt this gentleman, ſubſtantiated by that evidence which appears to me ſo ſatisfactory; and as the pannel has produced no evidence, it is impoſſible for me to ſee what defence he may make. I ſhall only ſay, in general, that if he diſputes the fact, I refer you to the evidence now lying upon the table. If he ſays that the facts, ſuppoſing they are true, are not criminal, I appeal to your own common ſenſe, I appeal to your own judgments, to the judgments of every court of law who have ever decided in criminal caſes. If he ſhould ſay, notwithſtanding all (for his counſel inſinuated ſomething of the kind,) that he acted from the pureſt intentions, and that his intentions were innocent, I muſt tell you, that with regard to the abſolute purity of his intention, it is impoſſible for human penetration to ſee; that muſt be reſerved in every caſe to the laſt day, when every truth muſt come out; but you, as well as every other tribunal, muſt judge according to the evidence and according to the facts as they lie before you; and from thoſe facts I think I have ſatisfied you, that their intentions were ſeditious, wicked, and criminal. I ſhall trouble you no further upon this caſe, but leave it to your deciſion. I have ſtated the grounds upon which I think myſelf entitled to demand a verdict of guilty.

MR. GERRALD.

Gentlemen of the jury, Mr. Solicitor General has told you with great truth and ſolemnity, that the cauſe of which you are at preſent the judges, is one of the moſt important which ever came before man for the purpoſe of determination.

Gentlemen, if at an early period of my life it had been announced to me, that the task of defending the rights and privileges of nine millions of people would have devolved upon me, a simple individual, I should certainly, from my youth up, have devoted my whole time, with unremitting application, that I might be enabled to execute so sacred and important a trust. Unfortunately, though a considerable period has intervened between the time of my being served with an indictment and my trial, yet I have been, in a great measure, distracted by various avocations, and my health much impaired by continual sickness. From my duty, however, no earthly consideration shall induce me to shrink. I this day, come forward to advocate a cause, that which the sun never shone upon one of more deep and general concernment; and, impressed with this awful consideration, I advance to it with a tremor that shakes every fibre of my frame. But whatever be the result of this day's deliberation, I shall always look back to the part which I have taken, with the consciousness of a man who has endeavoured well; for, however weak the flesh may be, the spirit is strongly inclined to the service.

Gentlemen, the state prosecutions which agitated and disgraced the middle of the last century, were by no means of the same importance with those of the present day.

The contest between John Hampden and the crown rested solely upon this question; whether the crown or the parliament should have the power of raising the supplies; but it was always allowed that the object of these supplies was the advancement of the general happiness. The cause which you are called to decide upon, is not merely a matter of pecuniary consideration; you are called upon decide whether man, who is by his nature social and rational, shall meet in society for the purpose of improving his faculties, and exercising those powers of reason which the common Father of us all has given us, to enlighten our understanding and enoble our hearts; or whether by relinquishing every thing that is virtuous, every thing that is praiseworthy, every thing that is valuable in the condition of our humanity, we shall be reduced to a situation beneath the beasts that perish.

Gentlemen, as an Englishman, I will not say a stranger in this country, for, from being members of the same community we have the same friends and the same foes; and the articles of the Union, I believe, say, that the natives of both countries are entitled to the same privileges---yet as an Englishman, I cannot but consider my situation as varying in some measure from that of a native of this country. In England, had I committed the supposed crime charged against me, the process would have been very different. The present legal process too much resembles those instituted in the last century, when prosecutions upon prosecutions were instituted for the purpose of destroying the freedom of our country: I say, the proceedings of the High Court of Justiciary too much resemble the proceedings of the Star Chamber before it was abolished. We have not in this country the advantage which we have in England of the bills

being originally found by a grand jury. We have not afterwards the privilege of a petty jury ſelected entirely by the ſheriff; but I underſtand that the aſſize is firſt appointed by the public proſecutor, from which fifteen are afterwards ſelected by the court.

This circumſtance did not however deter me, (though it was frequently argued amongſt other arguments) from coming down here to take my trial. No; when the ſcourges of the late proſecutions, and the melancholy fate of the proſecuted were held over my head, I was not to be deterred from doing my duty; though by many I was conſidered as devoted a victim as Regulus departing into voluntary exile, or like Curtius plunging into the gulf for the ſalvation of his country.

Gentlemen, informations began in England, during the reign of one of our worſt princes, Henry VII. who filled his private coffers by the plunder of his ſubjects. In conformity to this proceſs, I am ſorry to acquaint you, that I was brought before the ſheriff of this county by the operation, not by the regular ſervice, of a warrant. When I was taken up I aſked for the warrant, but it was refuſed. My temper, I truſt, is mild and peaceful; though, in England had a ſimilar proceſs taken place, the officer might have paid for his irregular conduct with the forfeiture of his life. But that was not my purpoſe; for as truth is my only object, ſo reaſon is my only weapon. My papers were taken out of my bureau and carried before the ſheriff. Knowing that thoſe papers could contain nothing to criminate me, I claimed them as my property, and ſigned the claim without any heſitation. I am ſhocked, however, to think that ſo groſs a proceeding ſhould take place in any country as a diſcloſure of ſecrets by taking private papers. Since the original ſeizure of my papers, a private letter has been arreſted in its paſſage to me from London, and in an attempt to ſee the contents, has been deſtroyed without it's ever reaching me. I demanded what could be the object of this procedure. I was informed that it was for the purpoſe of collecting evidence againſt me. This oollection of evidence then, it ſeems, may be made with impunity in Scotland, by as groſs a violation of the laws of the land, as certain other collections are made, of which the collectors when taken are afterwards hanged.

Gentlemen, the Solicitor General acknowledged with much candor, that if he could not prove the criminal intention, he could prove nothing. It is upon this grand principle that I reſt my defence; it is neither upon legal chicanery nor legal quibbles, theſe would be unworthy of the cauſe in which I am engaged. If the criminality of the intention alone can conſtitute the offence, either in a legal or moral point of view, I truſt I ſhall be able to make out ſo clear a caſe, notwithſtanding the calumnies which the lying breath of rumour may have caſt upon me, that you yourſelves, diſcarding prejudices which it is poſſible you may have imbibed, will retire from this Court as fully ſatisfied of my innocence as I am myſelf.

Gentlemen, if fugitation is in the eye of law deemed a presumption of guilt, appearance by parity of reason must be deemed a presumption of innocence. Notwithstanding the pressing solicitations and strong inducements held out to me by the society who delegated me, and who would have paid my bail, I determined to come down and appear before you. Can there then exist a stronger proof of the consciousness of the purity of my own intentions, than my having voluntarily appeared before that tribunal which I might have shunned, and from which innocence itself has fled?

Gentlemen, though it does not come immediately before you, I do conceive that by being brought to trial at this particular time is a harsh and rigorous measure; and it is rather remarkable that on the last Monday, a period which was marked for the first day of my trial, and when I appeared here before the Court, our Representatives in Parliament were in fact sitting in judgment upon these very judges; nor do I think it would have degraded the dignity of their functions, if they had acted with less heat and more deliberation, and had patiently waited till the result of the proceedings of the High Court of Parliament had been known upon their conduct.

Gentlemen, the history of Briton furnishes us with abundant instances of the interference of the legislature to correct judicial errors. In the case of Hampden, which was a period which must be dear and valuable to every Englishman, the parliament, by their interference, prevented the robbery of the subject, by the arbitrary fiat of the crown. It is not fit, I own, that they should interfere where the public is not deeply interested; but where it is, they are bound to do so in justice to their representatives, and they always have done so. Nay, they have gone further, and where the necessity was great, they have even come to a resolution in point of law, contrary to the judgment of a court of law, and to the opinion of ten out of twelve judges. In case the judges violated the law (a circumstance which in the late cases is yet to be determined,) or where they suspected any undue influence, either in the exertion or the support of the prerogative, by officers of the crown, or by *judges*, they have always interposed. Is it possible to forget or to controvert either their conduct, or the propriety of it, in the great case of ship-money, which was first brought into question by Mr. Hampden, a private gentleman, who, so far from regarding the trumpery, petty-fogging consideration of damages, declared, that he would not pay it were it but one farthing, if pretended to be demanded of right, and by colour of law; and yet proceeded, according to my lord Clarendon's own account, with great temper and moderation in that suit. His lordship adds, 'and all the world knows, that never any cause had been debated 'and argued more solemnly before the judges, who, after long deli-'beration among themselves, and being attended with the records 'which had been cited on both sides, delivered each man his opinion 'and judgment publicly in court, and so largely, that but two judg-'es argued in a day.' Ten of them solemnly pronounced their opi-

tion for the right claimed by the crown, and which it had regularly exercised for four years immediately preceding : but, as Lord Clarendon observes, (Lord Clarendon was a monarchical man, much attached to Charles I.) ' *the judgment proved of more credit and advantage to the gentleman condemned than to the king's service,* however, (adds he) these errors in government were not to be imputed ' to the court at that time, but to the spirit and over activity of the ' lawyers of the privy council, who should more carefully have ' preserved their profession and its professors from being profaned ' by those services which have rendered both so obnoxious to reproach.'

Gentlemen, this circumstance, I apprehend, is an object very important for your consideration, and which, I trust, will have some influence in the guidance and direction of your verdict ; inasmuch as you find that in England, in a case where ten out of twelve of the judges gave their opinions against the defendant, yet, still their sentence was reversed at a higher tribunal, that of Parliament. The sentence was reversed, and even Clarendon, a monarchical man, who comes down to us under great purity of character, tells you, ' that ' these prosecutions were instituted and carried on by the crown ' lawyers, who were over active in the execution of their duty, and ' had subjected them and the profession as obnoxious to reproach.'

Gentlemen, the indictment contains against me four charges I shall endeavour briefly (in order that I may take up as little of your time as possible) to state these charges specifically, and to give as specific answers to those charges, as the combined operation of my understanding and my conscience directs me to give.

The first charge is of so extraordinary a nature, that it was some time before I could bring myself to sit down to a serious refutation of it ; and upon any occasion not so important as the present, I should either have combatted it with the weapon of ridicule, (of which, even it is hardly deserving) or have thrown it behind me with silent contempt. I have been charged with making use of French terms, though it has been proved, as I shall presently shew, that this charge, ridiculous as it is, is also fallacious.

Gentlemen, it is a most extraordinary thing, that such a charge should be made in a country, against a native of that part of the kingdom, I speak not of Scotland, but of England, where all our old law proceedings are in that very language. The writings of the venerable Littleton, whose tenures contain the whole doctrine of our law of landed property, upon which my Lord Coke, the great Oracle of English Law, has written his Commentaries, are in the French language.

Britton, and other writers of as great authority, though of more remote antiquity, and who are deemed the legal patriarchs (as it were) in the history of jurisprudence, wrote in French ; and the king himself, even at this period, never gives his assent or refusal to

any act of parliament which binds the ſubject, without expreſſing himſelf in the language of that country.

Gentlemen, I ſay not this for the purpoſe of vindicating myſelf from theſe charges, for it has been proved to you clearly, from the evidence of Roſs, that theſe French terms were of his own inſertion. But I cannot help thinking that a ſpirit of malevolence dictated that part of the charge, and that theſe invidious inſertions were made for the purpoſe of infuſing into your minds an idea that I wiſhed to co-operate with France, with whom we are now at war: and I am the more authoriſed to ſtate this as the firſt indictment, with which I was ſerved, was totally devoid of theſe charges, and they have only been introduced in the ſecond. But theſe terms were the pepper and ſalt to ſeaſon the diſh for the gratification of the palate of the crown lawyers, and I, it ſeems, was to be offered up, like another Theyeſtes, as a victim for the banquet.

Gentlemen, the next charge againſt me is that of having uſed the word *citizen*. It was ſaid upon a former occaſion by the Solicitor General, that the uſe of the term was in itſelf innocent, and in many circumſtances might undoubtedly be proper; but here, again, he made a diſtinction. If a man, in the year 1745, (ſaid he,) had walked the ſtreets with a white cockade, it would have been highly criminal; but now the action would be perfectly harmleſs, becauſe there is no party exiſting amongſt us of an attachment to whom it might be interpreted as an emblem.

But, gentlemen, I hope your underſtandings will not be perverted by language of this kind, as you muſt ſee a moſt material and eſſential difference between marching up the ſtreets with a white cockade, and uſing the term *citizen*. The uſing of this term, though it may by ſome be deemed ridiculous, can, by none, be judged criminal. The word *citizen* is a term of peace, and denotes that relationſhip in which we ſtand to each other, as members of the ſame community, for the performance of our *civil duties*; whereas the wearing of a cockade is the emblem of a military occupation, and in the year 1745 was a particular and avowed emblem of hoſtility to the government of the country.

Gentlemen, the next part of the charge is, that theſe meetings were illegal and ſeditious. Now their illegality, I apprehend, muſt depend either upon one or other of theſe three principles; either on the name *Convention* which we took, the principles which that convention intended to eſtabliſh, or the manner in which they conducted themſelves after they met. Take away theſe three things and no charge remains, conſequently no ground of criminality. With regard to the firſt, our aſſumption of the name of Convention, I am ſure your own underſtandings will inform you, and it is a petition to which the crown lawyers have aſſented, that to take a particular name does not conſtitute a crime. Many reſpectable gentlemen, in point of fortune and talents, met in a Conven-

tion, expreſsly ſo called, for a Reform in the Scottiſh Boroughs, in Edinburgh, and though their views were different from ours, ſtill it ſhews, that the bare aſſumption of that *name* does not conſtitute an offence in the eye of the law. Our crime muſt then depend either upon the principles which the Britiſh Convention intended to eſtabliſh, or the manner in which they conducted themſelves when met.

Gentlemen, in a cauſe ſo ſacred as the preſent, I would ſcorn to tell a lie to ſave my life. I boldly avow, and I hope the reaſons on which I ſhall defend the principles will be equal to the confidence with which I make the aſſertion, that our object was to procure, by *peaceful* means, Annual Parliaments and Univerſal Suffrage; and, in ſo doing, notwithſtanding all the declamation that has been urged againſt it, I ſhall endeavour to convince you that the eſtabliſhment of theſe principles is not only conformable to every maxim of ſound government, but congenial to the ſpirit of the Britiſh Conſtitution itſelf. In order, gentlemen, to aſcertain the firſt point, that Univerſal Suffrage (perſons incapacitated by crimes and infanity excepted) is in fact conſonant to the firſt principles of all good government, it will be neceſſary that we take ſome ſhort view of the fundamental principles of ſociety itſelf. The great object of the ſocial inſtitution, the great object for which men form themſelves into ſociety is, I apprehend, the ſafe enjoyment of their lives and property. If, then, in the earlieſt ſtages of ſociety, every man poſſeſſed a right to the preſervation of his life, and alſo to the peaceable enjoyment of his property, it follows of courſe, that the mode of government, which is beſt calculated for the attainment of thoſe ends for which government itſelf was inſtituted, muſt be preciſely that very mode of government which all reaſonable beings would wiſh to ſee univerſally adopted amongſt men. Now, as every man claims from nature, a right of judging for himſelf on the beſt manner of promoting his own intereſt, and as no individual is born with any diſtinguiſhing mark of pre eminence over his fellow-men, or with any character of exemption from the ordinary frailties of human nature, ſo every act of authority exerciſed by one man over another, or by a legiſlature over the *collective body of the people*, unleſs it be exerciſed by the conſent of the individual or of the collective body of the people governed, muſt be an *act of tyranny*. The right of the exerciſe of the underſtanding is the nobleſt privilege of our nature, and indeed is inſeparable from our condition as moral agents; moral agency, in fact, being nothing elſe, but the being guided by the dictates of our own underſtandings and conſciences in preference to thoſe of another. And if, after the enactment of poſitive law, we ſubmit to its authority, from which our private judgment may have revolted, it is only becauſe a greater number of reaſonable perſons conſenting to the law, than of thoſe diſſenting from it, carries with it the ſtrongeſt preſumption that the paſſing ſuch law has been the reſult of a greater portion of reaſon, than its rejection would have been—that it is founded in juſtice and truth,

and therefore more conducive to the great ends of ſociety, inaſmuch as it has received the authoritative ſtamp of the approbation of the greater number of its members, who, in all well regulated communities, being equally entitled to a participation of its benefits, muſt of courſe be equally intereſted in promoting its welfare.

It is not true, that when men agree to erect a government they give up any portion of their rights. No; they only adopt a different mode of enjoying them. They give up nothing; but by combining their own *particular* force with the force of others, they adopt a plan, by which they are enabled to poſſeſs their rights in greater ſecurity. All juſt government, therefore, being only a delegation, it cannot be armed with more power than it derives from the conſent of them over whom it is exerciſed. Now, as prior to the eſtabliſhment of government, no man had a right to take from another any property without his conſent, and as all juſt authority exerciſed by any government muſt be derived from the people, ſo the government (which is, in other words, a national aſſociation for general good) cannot of right exerciſe any power, which one individual, before government was eſtabliſhed, was not authoriſed to exerciſe over another. Hooker, to whom Queen Elizabeth, always applied the juſt epithets of learned and judicious, aſſerts, that the principle which I have juſt ſtated is the only ſolid foundation of all legiſlative authority. Laws they are not, ſays he, which *public approbation* hath not made ſo. *Hooker's Eccles. Pol. lib.* i. *ſect.* 10. And Mr. Locke expreſsly ſays, that, 'as government cannot be ſupported without great 'charge (a truth which we, God knows! feel every day to our 'coſt,) ſo it is fit that every one who enjoys his ſhare of the pro-'tection, ſhould pay out of his eſtate his proportion for the main-'tainance of it. But *ſtill it muſt be with his own conſent*, i. e. the 'conſent of the majority, giving it either by themſelves, or their 'repreſentatives choſen by them. For if any one ſhall claim a 'power to law and levy taxes on the people, by his own autho-'rity, and without ſuch conſent of the people, he thereby invades 'the fundamental law of property, *and ſubverts the end of govern-'ment*. FOR WHAT PROPERTY HAVE I IN THAT WHICH ANO-'THER MAY, BY RIGHT, TAKE WHEN HE PLEASES TO HIMSELF?' Here then, Gentlemen, is the doctrine of Univerſal Suffrage expreſsly laid down. For as no man, in a ſtate of ſociety, can be altogether without property, either inherited or acquired by his daily labour, and as every man in the country pays a tax to government, either directly to the tax-gatherer, or indirectly through the commodities which he conſumes, which all taxes ultimately affect, ſo it appears to me clear as the light of Heaven, that every man of adult years, not incapacitated by crimes or infanity, has a RIGHT TO A VOTE; otherwiſe he may exclaim, in the language of Mr. Locke, 'what property have I in that which another may, by right take 'when he pleaſes to himſelf?' That government, then, gentlemen, which is not a government of *conſent*, muſt of neceſſity, be

a government of *uſurpation*.—After all, there are but three modes, (except a man allows himſelf to be a public mendicant) in which money paſſes from man to man; by force, by fraud, or conſent.

The firſt, it will not be contended, except by conquerors or highwaymen, can ever eſtabliſh a juſt ground of poſſeſſion. By the operation of the ſecond principle, I am afraid, it does paſs, whenever a man pays a tax in a government in which he is not repreſented.—During the American war, Lord Camden, the firſt law authority in England, and now preſident of the council, repeatedly aſſerted, that "taxation and repreſentation were inſeparable." Now, if his lordſhip meant any thing by the word repreſentation, he certainly muſt have meant adequate repreſentation, for no other deſerves the name, or anſwers the end; which adequate repreſentation is well explained by Sir Thomas Smith, a writer of great note and authority, in his Commonwealth of England, p. 37. "Every Engliſhman," ſays he, 'is intended to be preſent in parliament, either in perſon, or by procuration and attorney, of whatever pre-eminence, ſtate, dignity, or quality ſoever he be, from the prince to the loweſt perſon in England. And the conſent of the parliament is taken to be EVERY MAN's conſent.' Here is the doctrine of Univerſal Suffrage, laid down in words as ſtrong as the Engliſh language can afford. It was then to repair theſe ravages, which time, whom my lord Bacon terms the greateſt INNOVATOR, had occaſioned, that the Britiſh Convention ſat; it was not to deform our conſtitution, but to reſtore it; it was not to promote, but to prevent its deſtruction, that we aſſembled. Beſides, gentlemen, if the principle which Mr. Locke again ſtates (ſee book on Government, p. 236.) be juſt, 'that the preſervation of property being the great end for which man enters ſociety," it neceſſarily ſuppoſes and requires, that the people ſhould have property, without which they muſt be ſuppoſed to loſe that by entering into ſociety, which was the end for which they entered into it; too groſs an abſurdity for any man to own. Men, therefore, in ſociety, having property, they have ſuch a right to the goods, which by the law of the community are theirs, nobody hath a right to take their ſubſtance, or any part of it from them, without their own conſent. If ſuch then, gentlemen, is the principle which ought to regulate the intercourſe between man and man, in the common affairs of life, by how much more ought that principle to be obſerved by the legiſlature itſelf, to whom the moſt ſacred of all truſts has been committed, and whoſe breach of any ſound and ſalutary principle will be the more criminal, in proportion as ſuch breach will be more extenſively miſchievous?

Theſe are the principles of a man, who has a long time deſervedly paſſed for one of the greateſt maſters of reaſoning which England ever produced; who wrote in expreſs vindication of the Revolution, and who, afterwards, held a place under King William (and would to God places had been always as worthily beſtowed!) until he went to receive the final reward of his labours, from that Being

who will always confer it upon thoſe who deſerve it well. Gentlemen, it is worthy of remark, that, not only ſpeculative writers upon government, but writers upon municipal law. Sir William Blackſtone himſelf, a judge, ſhould lay down the ſame principle, not in expreſs terms indeed, but, as you will ſee, very ſtrongly by implication. He ſays, " In a free ſtate, every man who is ſuppoſed a free agent" (and unleſs a man is incapacitated by crimes or inſanity, every rational being may be ſo denominated) ' ought ' to be in ſome meaſure *his own governor*.' *See Black. Comment. octavo edition, page* 158. Now, if words have any meaning, what does this eſtabliſh, but the doctrine of UNIVERSAL SUFFRAGE? For I know of no other definition of liberty, than that thoſe who are bound by the law, ſhould have a ſhare in the making of it, either perſonally, or by deputy; and no other idea of ſlavery, than that ſtate in which men are governed without this conſent. Men who make laws for me, may indeed impudently tell me that I am free, for men may lie; but unleſs I have ſome ſhare in the appointment of thoſe who are to govern me, I can, in no ſenſe, be ſaid to be my own governor; but, on the contrary, have no more concern with the government of my country, than I have with thoſe of Turkey or Morocco. Now, if the ſtrict obſervance of this principle be neceſſary to give government a *moral right*, to take away the *property* of the ſubject, in how far greater degree, ſhould the ſame principle be obſerved, as alone conſtituting a ſolid ground of authority, which can empower the legiſlation to frame laws, for a breach of which men are to be deprived of their lives?——it has been ſaid alſo that the plan of univerſal ſuffrage is viſionary and impracticable. But this obſervation, if true, though it may mark the plan itſelf as abſurd, muſt neceſſarily diſcharge from blame all thoſe who have propoſed it. For a nonentity, like a phantom, is not to be dreaded, and a plan that is attended with no danger, is certainly no object of legal proſecution. No, gentlemen, our Creator, I am confident, has placed every thing that is valuable, every thing that is neceſſary for our happineſs, within the graſp of human attainment. If then we ſhould wantonly indulge wiſhes, and purſue objects, which are neither proper for us, nor attainable, the true and only puniſhment ſhould be (as it muſt be) the fruſtration of our hopes, and the anguiſh of our diſappointment. If like children we cry for the moon, like children we ſhould cry on.

But, fortunately for me, gentlemen, my experience enables me to give a flat contradiction to the poſition advanced. I myſelf, reſided, during four years, in a country where every man, who paid taxes, had a right to vote; I mean the commonwealth of Pennſylvania. I was an eye witneſs of many elections which took place in Philadelphia, the capital of the ſtate, an induſtrious and populous city, and can ſafely aſſert that no one riot ever enſued. For, in truth, gentlemen, the repreſentative had no intereſt diſtinct from his conſtituents; the office which he undertook was rather a burthen than a benefit, and

as the government was too poor to purchaſe, and the people too virtuous to barter away their liberties, (even if the caſe had been otherwiſe) ſo the deputy, though he had every opportunity to ſerve, had no temptations to ſell his conſtituents. What then has been found by experience to be wholeſome food for Americans, can never prove hurtful or poiſonous to Britons, the parent ſtock from whom Americans are deſcended.

Gentlemen, I am aware, that every practice and inſtitution is alone defenſible upon its own intrinſic merits, and the reaſon of the thing; yet the adoption of any principle, by men eminent for virtue and learning, is certainly no ſmall preſumption of the ſoundneſs of the principle itſelf. Gentlemen, Sir William Jones, a name too diſtinguiſhed in literature to derive ſplendour from any encomiums I can beſtow upon it, and who has acted as a judge for more than twelve years in India, previouſly to his departure publiſhed a tract in which he vindicated the doctrine of *Univerſal Suffrage*. At a very early period of my life, I was honoured with the friendſhip and patronage of this gentleman, and I am ſure he would deeply feel, even after this long ſeparation, any calamity which might befal me; a calamity (if it be one), certainly, not altogether, but in ſome meaſure, perhaps, produced by converſation with thoſe whoſe practices were pure, and whoſe principles I conceived to be juſt, and who were therefore objects of reverence among men. Yet this very gentleman, at this very period, holds an office of great truſt and great emolument in his majeſty's important ſettlement of Bengal, and unſeals thoſe ſacred fountains of juſtice which gladden and refreſh fifteen millions of men.

Gentlemen, having now proved to you that the principles of which I am accuſed muſt be, in fact, the principles of all good government, and that they have been ſupported by the greateſt of all human authorities; I ſhall now prove, I truſt, equally to your ſatisfaction, from incontrovertible hiſtorical documents, that they are alſo congenial to the ſpirit of our conſtitution.

Gentlemen, Monteſquieu has told us, that the rudiments of our excellent conſtitution are to be ſought and found in the woods of Germany; where, as Tacitus informs us, *all* were *free*, and where all were entitled to deliberate upon matters of national importance. No propoſal could paſs into a law, binding upon the people, which had not been approved by the people.

'*De Germania. De minoribus rebus* PRINCIPES *conſultant, de majoribus* OMNES. *Ita tamen ut ea, quoque, quorum penes plebem arbitrium eſt apud principes* PROTRACTENTUR.' I have adopted the reading of Colerus and Ædalius in preference to the common reading which is *pertractentur*, and which correſponds with the Greek, the proper buſineſs of the ancient ſenates.

Gentlemen, in the earlieſt ſtages of ſociety, when commerce was ſcarce buding, almoſt every inhabitant held a certain portion of land: and as land, alone in thoſe days, was the fund from which

taxes were raiſed to ſupport the expences of government, ſo every land holder (of which deſcription was almoſt every member of the community) had a right to vote. Squire, in his view of the Anglo Saxon Government, a book of very profound reſearch, (Gentlemen, Squire was Archdeacon of Bath, and afterwards Biſhop of St. Davids, and it is certainly no part of the Epiſcopal function to diſſeminate ſeditious doctrines among the people) Squire tells us, the affairs of the country were, at that time, conducted by the king, the witenagemot, and the myclegemot. The witenagemot, or kings court, was an aſſembly of the beſt and the wiſeſt men in the nation, correſponding to what our privy council is, or (I beg pardon of our anceſtors) correſponding to what a privy council *ought* to be. The myclegemot, on the other hand, were a body choſen by the *people at large*, correſponding to what the principles of our conſtitution ſuppoſe the parliament ſhould be, a real repreſentation of the people. 'The Witenagemot (ſays 'Squire, ſee p. 190) were perſons ſuppoſed to be beſt acquainted 'with the exigencies of the public. It was their duty to *propoſe* 'what they thought moſt expedient for the good of the *whole*; 'the new laws, eſpecially, ſeem all to have been drawn up and 'prepared by them, though nothing which they did of this kind 'was obligatory to the community, until it had received the gene-'ral confirmation.' How was this general confirmation brought about, but by the vote of every *freeman?* a term applicable to all, except ſuch as were in a ſtate of perſonal ſlavery, who upon the Norman conqueſt were denominated villians; a ſet of men, correſponding to what, your lordſhips well know, the civil law calls *adſcupti glebæ*; but who have ceaſed to exiſt in this country for near a century and a half, villainage being formerly aboliſhed by an act of parliament, paſſed in the early part of the reign of Charles II. As it is ſtrictly conformable to the ſpirit of our conſtitution, to continue all laws and cuſtoms in *favorem libertatis*, ſo perſonal ſlavery being now done away, and all Britiſh citizens being *freemen*, they are of courſe entitled to all thoſe privileges which even the expreſs letter of our early conſtitution conferred upon them, as deſcribed, exerciſed, and enjoyed, in their fulleſt extent.

Gentlemen, this was the form of government, which in a very early period prevailed; theſe were the principles which flouriſhed during the reign of the Great Alfred, than whom never lived a purer legiſlator; and who, Hume, in expreſs terms, tells us, approached as nearly to human perfection as the infirmities of human nature would admit. If then, gentlemen, theſe doctrines are conformable not only to the univerſal principles of juſtice and of reaſon; if they are ſo expreſsly maintained by ſo reſpectable an authority as that of Mr. Locke; if they are implicitly aſſented to by ſo reſpectable a judge as Sir William Blackſtone, (for the words 'every man is his own governor,' mean that, or they mean nothing) if they have been publicly avowed by Sir William Jones, who, in point of learning, yields to no man to whom this kindom

has given birth, since the days of Lord Bacon; I cannot, surely, be charged with innovation and a design to disturb the public peace, for having circulated principles that have long been current, and which men of so distinguished reputation have acquired fame in supporting.

Gentlemen, I know much nonsense has been talked about virtual representation: but if representation be not real, it is no representation at all. I wish to God that the supporters of virtual representation would impose on us only virtual taxes, and inflict virtual punishments; but this they will not do: therefore, till that event, I do not think they have any right to more than virtual taxation. Gentlemen, I lay down these principles as subjects for your consideration merely; for I hold that every inconvenience is to be borne for the preservation of the general peace. But whenever governments act directly contrary to the end for which they were instituted; when, instead of being the guardians, they become the oppressors of our liberties, common sense, common justice, and express law authorities, will tell us they are no longer objects of obedience: and this our ancestors confirmed, when they established the Revolution.

Gentlemen, I am not so well skilled in the historical antiquities of Scotland as I could wish, or, perhaps, as it was my duty to have been; but I beg you will carry this principle continually in your minds, that if such have been the privileges of England, and if this country is entitled, by the articles of union, to the same privileges, I see no offence in wishing, and attempting to effect, that Scotsmen should be admitted to a participation of the same rights. I have, in my hand, a book of the late Dr. Stuart, who has written upon the public law and constitution of Scotland, in which are several passages that favour, very much, the doctrines I have laid down, and which, at the same time, prove a strong similitude between the ancient Scottish and English constitutions. 'In 'the body of the laws of William the Lyon, who began to reign in 'the year 1165, are these notices: *assisa regis Willielmi, facta apud 'Perth, quam episcopi, abbates, comites, barones, thani, et* TOTA COMMUNITAS REGNI, *tenere firmiter juraverunt.*' 'An assize of King 'William, made at Perth, which the bishops, abbots, knights, barons, thanes, and *the whole community of the kingdom*, firmly 'swore to maintain.' Cap. 7. And again, '*statuit rex per concilium et assensum* TOTIUS COMMUNITATIS SUÆ.' 'The king hath 'enacted by the advice and consent of *his whole community.*' Cap. 4. The preamble to the laws of Robert I. is also in these words. '*habitoque solemni tractatu, cum episcopis, abbatibus, prioribus, 'comitibus baronibus, et aliis magnatibus,* DE COMMUNITATE TOTIUS REGNI *ibidem congregatis, super variis et arduis negotiis,*' &c. 'The constitution was greatly treated of, with the bishops, priors, knights, barons, and other great personages, of *the whole commu-*

'*nity of the kingdom*, at the same time gathered together, upon va-
'rious and arduous affairs.' So when John Baliol told Edward I.
that he '*could not* and *dared not* express any sentiment which con-
'cerned his kingdom without consulting his people,' he meant some-
thing more than the sanction of the prelates, the nobles, and the ten-
ants in capite. *Ryley Placet. parl. p.* 159. *an.* 1293. And Dr.
Stuart, that profound and laborious antiquarian, positively says, that
'the expression of Baliol is easily comprehended, and had a refer-
'ence to the whole kingdom.' (*See Observations concerning the Public Law and Constitutional History of Scotland, p.* 334. The expression Magnates, or *great men*, which is found in the statute of Robert I. that I have just quoted, may, I am aware, be supposed to apply only to persons of higher rank, yet, upon examination, it will, I am confident, be found strictly applicable to the representation of the *people*, the *tota communitas*. For in England it appears exactly in the same sense; and we know, both from Rymer and Pitt, that in that kingdom, *noble, most noble most illustrious, most precious seignors, monseignors* and *sirs*, were appellations of the *Commons*. Here, then, is a proof, that in the early period of the history of Scotland, the *whole community of the kingdom*, (*i. e.* every free man) not collectively, no doubt, but *representatively*, were concerned in passing those laws, which they also swore they would firmly maintain.

Gentlemen, I cannot account for this coincidence between the constitutional forms and principles of England and Scotland, at so early a period of our histories, without supposing that they must be congenial to the natural order of all government itself; and that these deviations which have since been made by the ravages of time, have been the abuses of the constitution, and not the principles of it.

Gentlemen, the third charge against me is that of having urged arguments in support of annual parliaments though I have heard from very respectable authority, no less, I believe, than one of the learned lords upon the bench, he did not conceive there was any material objection to such a measure. He gave indeed no decisive opinion upon it; but he seemed to think, that a mere peaceful discussion of the subject of annual parliaments would not render a man an object of criminal prosecution by the laws of this country. But I go further; I apprehend that annual parliaments may be supported as well by the reason of the thing, as by ancient usage; and upon this plain principle, that power long continued is too apt to corrupt the disposition of the possessor, and that a people, when they intrust so sacred a charge as that of making laws, (the abuse of which may work a destruction of their lives, and the ruin of their property) cannot be too vigilant in observing the conduct of those to whom they delegate this trust, nor too quick in recalling them whenever they abuse it. By long parliaments we lose the great advantage which our constitution has provided, of curing the evil, before it grows confirmed and desperate, by the gentle method of choosing a new representative;

and the *people* are by conſequence reduced to have no other alternative, than that of ſubmitting or reſiſting; though ſubmitting will be as grievous, and reſiſtance much more difficult, when the *legiſlature* betrays its truſt, than when the *king* alone abuſes his power. Beſides, ſhort parliaments, ſhould they become ſuddenly corrupt, carry with them their own corrective; for, 'leeches, and other 'blood-ſucking worms, as Davenant well obſerves, are engendered 'in ſtanding pools; flowing waters do not corrupt nor breed ſo many inſects.'

It is a melancholy fact, but it is a very certain one, that parliaments have generally been dangerous in proportion as they have been long.

The long parliament (peculiarly ſo denominated on account of the length of time which they ſat) that ſat in the reign of Charles I. I believe were pretty inſtrumental in bringing the head of that unfortunate monarch to the block. I cannot therefore believe, that long parliaments can be ſupported by gentlemen, who avow, that their intention is to defend monarchical principles; when a parliament was that which overturned the monarchy, and beheaded the ſovereign. The Houſe of Commons which ſat for ſo long a time in the reign of Charles II. were ſo notorious for their profligacy, that Rapin aſſures us, one half of them were bribed by the court of France, probably, the other half by our own.

Gentlemen, I am well aware that it may be ſaid, that if elections were more frequent, greater tumults would enſue. I apprehend the reverſe of this poſition is exactly the truth; for, it might be worth the while of a member of parliament to get elected under the corrupt influence of the Miniſter, when he is in for ſeven years though not when he is in only for one; for, knowing that he muſt, at the end of a year give an account to his conſtituents, he would take greater care how he executed the important truſts committed to him, than if he was delegated for a large time. If then, gentlemen, the object of getting into parliament would not be ſuch as to make it a ſtronger inducement for perſon's, in general, to become members, of courſe tumults would not ſo frequently enſue at general elections as, to our misfortune and diſgrace, they do under the preſent ſyſtem.—In ſupport of this doctrine of annual parliaments, I am fortified by the authority of a gentleman, who is and who has long been, a member of the Houſe of Commons, I mean Mr. Alderman Sawbridge, who, wearied out, at laſt, by continual diſappointments, has abandoned his project, not from conviction, but deſpair. The treaſury bench, indeed, *ſolito more*, "according to cuſtom," never made Alderman Sawbridge's propoſal the ſubject of diſcuſſion; but, as often as the motion was made, coolly negatived it, by the *dead eloquence* of numbers.

Gentlemen, parliaments you muſt recollect, were annual, till the time of Henry VIII. He was the firſt who broke in upon the cuſtom of annual parliaments; and he, I truſt, will never

brought forward as an authority as he was a *monſter* of whom it was, emphatically ſaid, "that he ſpared no man in his wrath, nor "woman in his luſt;" and, who diſtinguiſhed himſelf during a long and a bloody reign, by oppreſſing his ſubjects, and beheading his wives. Beſides, gentlemen, as the great object of the SOCIAL INSTITUTION is to call forth, to their fulleſt exertion, the aggregate faculties of all thoſe who are members of it, for the purpoſe of producing the greateſt poſſible ſum of happineſs; ſo, if this cuſtom of annual parliaments were revived (for they are not innovations) it would introduce many more into public buſineſs, who are now excluded from it, and whoſe minds being inflamed and invigorated with a love of glory, and a paſſion for promoting the public weal, would rouſe themſelves from that ſupineneſs which invites oppreſſion, and which is too often the bane and deſtruction of nations. For, under the preſent ſyſtem, many perſons having ſcarcely any concern with the government, except as they are called to ſupport it by the payment of taxes, they either grow careleſs and indifferent about the meaſure which it adopts, or ſeek to better their condition by recourſe to violence.

Gentlemen, it appears that ſuch alſo was the law of Scotland; for I find by a ſtatute paſſed in the 1ſt parliament of James VI. in the year 1587, "it is ordained, that the commiſſioners of all the ſchir "reffdomes of this realme be elected be the freehalders foreſaids, at "the firſt head court after Michaelmas *zeirly*." It is, therefore, no new doctrine in Scotland any more than it is England. And I find by an article of the *Claim of Rights* that the Old Scottiſh Conſtitution was to be reſtored; which claim of rights certainly took place after the paſſing of that act, and which act conſtitutes an eſſential branch of the Scottiſh Conſtitution.

A very eminent writer, gentlemen, upon annual parliaments, begins his book with this very remarkable obſervation, "*where annual* "*election ends, ſlavery begins.*" And he ſtates preciſely the reaſons that I have ſtated to you, that if power continues long in the ſame hands, it has a tendency to corrupt, and that it ſhould not only be delegated for the benefit of thoſe over whom it is exerciſed, but, that it ſhould alſo be delegated in ſuch a manner as to prevent any *permanent*, if not *immediate* abuſe of it.

Gentlemen, I now come to the period of the Revolution, an event which eſtabliſhed our conſtitution, (it is ſaid) a conſtitution, however, which weak men, I fear, praiſe without underſtanding, and which wicked men violate while they praiſe. The Engliſh delegates have been charged with an intention of having come to this country, for the purpoſe of deſtroying thoſe advantages and benefits which the ſubjects of the two united kingdoms derived from that glorious event. If the charge could be brought home to us, it would not be merely a tranſportation to Botany Bay, which ought to be our fate, but an execution at the gallows. But the charge is totally unfounded, and I am ſurpriſed that it has been

brought forward by perſons in particular ſituations; ſince that charge, like many others, will, upon examination, recoil on the heads of thoſe who made it. I will ſhew you, gentlemen, that the benefits of the Revolution have been done away, but not by us; for it was our purpoſe to revive them. Has it not been proved, by Mr. Wharton, in the Houſe of Commons, in a ſpeech to which no anſwer was given, that not one ſingle veſtige remains of the wholeſome regulations which the Revolution produced. I know that it is treading over beaten ground; but, I truſt, you will not think your time uſeleſsly conſumed, when it goes to eſtabliſh a point, upon which my guilt or innocence materially depends. I ſhall now read to you extracts from a pamphlet, of which I am not aſhamed to avow myſelf the author, entitled "addreſs of the Britiſh Convention to the people of Great Britain," and which was drawn up by me at their expreſs direction: "The ſpirit of Alfred again roſe to animate the councils of his regenerated country. Scotland, which had long groaned under the domination of an auſtere and inſolent ariſtocracy, was called in to ſhare with her brethren of England, the bleſſings of freedom, which ſhe had contributed to produce. Placemen and penſioners were excluded *by law* from the Houſe of Commons, leſt a ſenſe of their dependance on the crown ſhould, as it muſt, make them forgetful of their duty to the people. Parliaments were not to ſit for more than three years, ſince power long continued is commonly abuſed, as thoſe entruſted with it, are too prone to forget the hand which gave, and the purpoſe for which it was given. Miniſters were made anſwerable for the counſels which they afforded, and the throne, now guarded by the vigilance, and ſuſtained by the love of all its ſubjects, was no longer a ſanctuary for the treachery of its ſervants.

Friends and countrymen, theſe wiſe and wholeſome proviſions, which were once the boaſt and ſecurity of Britons, now form only an object of melancholy remembrance. They are buried in the ſame ſepulchre with the bodies of our anceſtors. In many parliaments, which have ſitten ſince the Revolution, placemen and penſioners have been ſo numerous, as to controul the will, while they violated the rights of the people. Since that time, parliaments have more than doubled the term of their duration, not by an appeal to the voice of their electors, but by the arbitrary effort of a ſelf conſtituted authority. Judging from this ſpecimen, and drawing the natural inference, that what *has* been done *may* be done again, we know of no barrier or ſecurity, at preſent exiſting, to prevent a future parliament from enlarging the term of their duration to twenty years, or, if it ſuits their intereſt or ambition, from declaring themſelves perpetual. The reſponſibility of miniſters has become an empty name. Crimes, which during former periods, would have called down upon the heads of their guilty authors the juſt vengeance of an injured nation, have been only a paſſport to opulence and power. The people of Britain have ſeen

the very miniſters who diſmembered the empire, ſquandered a hundred millions of money, and poured out the blood of more than a hundred thouſand of their fellow-ſubjects in a cruel and deſperate conteſt, again recalled into the confidence of their ſovereign, and loaded with the honors and emoluments of the empire.

Thus you behold, that the ſpirit of thoſe regulations, which the Revolution produced, is fled, and what remains is only the dead carcaſe which encumbeas the ſtatute book. We now aſk, who are thoſe, that are guilty of innovation? Is it that band of hirelings, to whom coruption is food, or is it we, who wiſh only to reſtore the principles of our Saxon anceſtors, which gave us freedom, and that ſacred compact which confirmed it at the Revolution? If the foundations of the throne are ſhaken, are they ſhaken by us, who ſeek only to replace it on thoſe ſolid grounds, on which it was originally erected; or, are not they rather ſhaken by thoſe who, with hollow profeſſions of loyalty in their mouths, have ſought to eſtabliſh the authority of the crown, by the renovation of thoſe practices which baniſhed the Stuarts, and by the violation of thoſe principles which elevated the Brunſwicks? We cheriſh the conſtitution of our anceſtors, not as a ſpeculative bauble, but as a practical good, and we contraſt, with an honeſt pride, our own ſincere admiration of that ſyſtem, with the fawning treachery of its real foes—of men, whoſe praiſe is profanation, and whoſe external homage is concealed blaſphemy."

Yet, notwithſtanding, the preſent ſyſtem of government is a libel upon our real conſtitution; the word *conſtitution, conſtitution!* is rung in our ears with unceaſing perſeverance. This is the *taliſman* which the enemies of reform wield over the heads of the credulous and the ſimple; and, like old and wicked enchanters, having firſt bound them in the ſpell, take advantage of the drowſineſs which their arts have created. But to hear placemen and penſioners talking of a conſtitution, when their whole lives are one uniform violation of its principles is, like a monk preaching population, or a farmer general commiſerating the diſtreſſes of the poor.

Gentlemen, there is one particular error, into which all thoſe who have enumerated the regulations which took place at the Revolution have fallen, and of which, until a few days paſt, I myſelf was not conſcious. Having no other object but truth, I beg leave to ſtate it to you. The bill for excluding placemen and penſioners, though it paſſed in the reign of King William, was not to take effect until the acceſſion of the houſe of Hanover. In the intermediate period, indeed, that act was repealed; but does not the paſſing of the act, at the period of the revolution, clearly prove that we are entitled to its revival, now, when the houſe of Hanover is ſitting on the throne, in conſequence of that very revolution; and when it may be ſafely in-

ferred, that the act alluded to, and their compliance with its principles, was made a condition of their subsequent elevation?

Gentlemen, the public prosecutor has, in vague and general terms, charged me with an intention of overturning the constitution; but I now call upon him in terms particular and precise, to declare whether the system under which he acts has not rooted out every valuable principle, every wholesome regulation, which the revolution produced; whether those regulations are a living spirit, or a dead letter; whether placemen and pensioners do not now swarm around the treasury bench, like vermin on the banks of the Nile. And even when, by a mockery of our understandings, they vacate their seats, for a short time, for what is called the Chiltern Hundreds, are they not again re-elected?—elected did I say? No! again nominated by the peer who originally sent them, in a manner as peremptory as the king, by his Conge d'Elire, nominates a bishop! This, gentlemen, is not idle declamation; it is solid fact, and incontrovertible proof. I therefore call upon you, my countrymen, in your turn, and ask you, how you can conscientiously lay your hands upon your hearts, and solemnly declare, before God and the world, that I have attempted to overturn a system, of which it has been proved to you not a vestige remains? Do you not know, that those who instigated this prosecution, when called upon to revise these principles of the constitution, as they could not answer the arguments of the patriot Wharton, preserved a sullen and criminal silence? What then must you think of a state prosecution, which rests for support on so sandy a foundation; or what rather must you not think of the conduct of those men, who, while they are heaping upon my devoted head the charges of treasons, conspiracies, and sedition, can give the real scandal of so notorious and wilful an insincerity?

Gentlemen, the triennial bill has long been repealed: but why not now revive it;—since the reason on which it was repealed has long since ceased? For, if you will take the trouble, gentlemen, of looking at the parliamentary debates of that period, not even the rankest ministerial hireling attempted to defend the measure, upon any other principle than that of temporary expediency; as it was thought unsafe to expose the country to the tumult of a general election, when a rebellion was raging in the heart of the kingdom. But now it seems, the septennial bill has become as much a part of our government, as the malt-tax, the mutiny-bill, and a standing army; which when first passed, it was declared, were only to be temporary, and, like the septennial bill, were only submitted to on the fatal plea of a state necessity. "The responsibility of ministers, it is stated, has become an empty name." Would to God it were false; but is not the fact as melancholy as it is true? Do not those ministers who conducted the American war (an event which shook these kingdoms to their deepest foundation) conduct the present war? Did not Lord North, who was prime minister during the whole of the war, enjoy, for many years after the war was end-

ed, a ſinecure place of 5000l. a year (now indeed devolved upon Mr. Pitt?) And do not his family, at this very hour, receive from the country a conſiderable income, granted during their father's miniſtry, by way of reverſion, though I could never learn that they have earned it by their ſervices?

Gentlemen, the right of our meeting in convention by *delegation* has been expreſsly denied by the Solicitor General, and he, (I am ſure if I miſtake his meaning, it is not purpoſely, and I beg he will interrupt me) I think he denied our right to meet by delegation.—Had we met as the united delegates of all Britain, we ſhould have arrogated a title to which we had no right. But we did no ſuch thing: we met, only, as the repreſentatives of ſome thouſands, who delegated us for a purpoſe which we knew to be conſtitutional; and we conducted ourſelves in a manner firm, but peaceable.

If, in the common concerns of life, a man can receive a power of attorney to manage the pecuniary concerns of another; ſo, I truſt, he is authoriſed to carry into execution, for the benefit of his fellow-creatures, affairs of a much greater concernment; otherwiſe you deny him, in fact, that privilege, without which all others are nugatory, I mean the eſſential privilege of ſelf-preſervation. I am happy, however, that the charge is brought forward, as a ground of criminality; inaſmuch as the meeting, which delegated us, was publicly held in an open field, in the face of day, in the preſence of many thouſands of our fellow citizens, who were calm and attentive ſpectators of what was paſſing, and in the preſence, even, of five hundred peace-officers, ſome of whom were members of our aſſociation, and others ſent, by the ſecretary of ſtate, to watch over our proceedings and to make their report. Of the latter, I can aſſert from my own perſonal knowledge, many became converts to our doctrines; which, as they were founded in reaſon, and have no other object than the general welfare of mankind, muſt make converts of all who have not an intereſt in oppoſing what it is their duty to practiſe. All theſe things, gentlemen, were ſuffered to paſs, under the eye of the police, under the very beard; if I may ſay ſo, of the ſecretary of ſtate himſelf, who is, *ex officio*, the great conſervator of the public peace; and in the very heart of the capital of our country, which is, or which ought to be, the great ſanctuary of the law.

Gentlemen, the publicity of our conduct was certainly a proof that *we* deemed it to be innocent. And if the officers of ſtate deemed it to be otherwiſe, upon what principle can you excuſe their ſupineneſs and inactivity in not diſperſing the meeting, and taking up the delegates, ſince to *prevent* crimes is far better than to *puniſh* them, and far more the duty of the civil magiſtracy, unleſs, in the pride and haughtineſs of their hearts, they ſought to cheriſh the ſeeds of a ſtate proſecution againſt men whom they had marked out as the victims of their reſentment? Their conduct, then, we can only look on as TRAPS TO ENSNARE US. Gentlemen, if what I have ſtated be well founded, we are entitled to draw theſe melancholy inferences; that

the articles of the Union are violated in this buſineſs, and that there is not, as the fourth article avers there ſhall be, 'a communication 'of all rights and privileges between the ſubjects of both kingdoms;" ſince a man may commit, with impunity, on the other ſide of the Tweed, what, if he croſſes it, he ſhall be tranſported for; that an unity of the principles of action, an equal and undiſtinguiſhing law, operating, either to the puniſhment or ſecurity of all citizens alike (and which is the great badge of freemen) does not prevail among us; but that the code of the two countries is an heterogeneous maſs, like Nebuchadnezzar's image, made up, partly of clay, and partly of braſs. Theſe facts, it would be like burning day light to prove, and he that runs may read them.

Gentlemen, the great and diſtinguiſhing mark of men is reaſon. If we are debarred from the privilege of exerciſing this invaluable faculty, we are reduced to a ſituation (I will not ſay on a level with the beaſts of the field, for many of them, like ourſelves, are ſocial and gregarious, and have the power) from the exerciſe of which the laws of this country has not as yet debarred them (of communicating their ideas, though not indeed by articulate ſounds) if we are debarred from this privilege, then, I ſay, we are reduced even lower than the brutes, and put upon a level with oyſters and other ſhell-fiſh, whoſe powers of motion are limited to gape and receive, what the bounty of nature, unlike that of the governments of the earth, which rather take than give, confers for their ſupport. The conſtant theme of the ſupporters of government is the excellence of the Britiſh Conſtitution. Willing as we are to admit the poſition, it is certainly not unreaſonable to aſk how is this excellence to be aſcertained. It is ſurely not a matter of inſtinct; conſequently, can only be aſcertained by the exerciſe of our reaſon. If you deny us this privilege, or, what is nearly the ſame, puniſh us for the uſe of it, your government, I aver, ſtands preciſely upon the ſame foundation as the governments of Turkey and Algiers; for the Viziers, the Baſhaws, and other ſtate officers of thoſe arbitrary governments, ſo long as they are enjoying their ſalaries, and fleecing the people, will aſſert, no doubt, with equal confidence, that thoſe governments are the beſt, and that all attempts to examine, or controvert by reaſon, the principles on which they are founded, are highly ſeditious, have a tendency to diſturb the public peace, and are, therefore deſerving of the puniſhment of the law. If you interdict the free uſe of our reaſoning faculties on matters of government (and they do no more) you and they are exactly on a par; and if you do not, the diſpute between us is at an end, as you concede the very point for which we are contending.

Gentlemen, it is a very melancholy conſideration in the preſent times, and it is with a mixture of grief and aſtoniſhment I ſpeak it, that the very ſame kind of arguments, which at the dawn of the Reformation were made uſe of by the Catholic clergy, who were

endeavouring to hold the people in the fetters of ſuperſtition, are now made uſe of by thoſe very perſons, who, for purpoſes equally ſelfiſh, are repreſſing the progreſs of political information. Cardinal Bellarmine, a man eminent for learning, but vehement in his oppoſition of religious reformation, declaims, particularly againſt the impious attempts to diffuſe knowledge among the lower claſſes; and to lay open the *Holy Scriptures to vulgar eyes.* Religion in thoſe days, it ſeems, like government in the preſent, was to be believed and confided in without being examined. Oh! Prepoſterous inſult to the dignity of human reaſon! Oh, Blaſphemy againſt the author of all goodneſs! As if the parent of knowledge were capable of giving a revelation to his creatures, to be adopted for ages by millions of reaſonable beings, that would not ſtand the teſt of human enquiry! The true religion, like all free governments, appeals to the underſtanding for its ſupport and not to the ſword. All ſyſtems, whether civil or moral, can only be durable in proportion as they are founded on truth, and calculated to promote the GOOD OF MANKIND. This will account to us, why governments ſuited to the great energies of man, have always outlived the periſhable things which deſpotiſm has erected. Yes! this will account to us, why the foul ſtream of prejudice and calumny, which is continually waſhing the diſſoluble fabrics of all ſuperſtitious impoſtures, paſſes without injury, by the adamant of Chriſtianity.

It is worthy of remark, gentlemen, that in our days, the great champion of deſpotiſm has not ſcrupled to borrow his favourite phraſe from a monkiſh writer, who was an enemy to the Reformation: Knighton, an abbot of Leiceſter, who wrote at the beginning of the Reformation, when he is deploring the publication of the Scriptures to the common people, has this remarkable expreſſion, 'Pity it is, that this evangelical pearl ſhould be trodden down under 'the foot of *ſwine.*' Mr. Burke laments, that 'learning ſhould be 'trodden down under the hoof of the ſwiniſh multitude.' In juſtice to the mouldering monk, I muſt however obſerve, that the expreſſion conſidered merely as an expreſſion is truly beautiful; whereas, Mr. Burke's phraſeology is as deſtitute of taſte and congruity as it is devoid of benevolence.

But, gentlemen, if you take the principle of the thing, you will findthat every nation has a right, not only to preſerve the form of government which is actually eſtabliſhed; but, alſo, by the peaceful and calm operation of reaſon, to improve that form of government, whatever it may be. If you deny this poſition, you muſt ſay, that our anceſtors had a privilege which we have not a right to exerciſe: an abſurdity too groſs to deſerve a ſerious refutation; ſince all men being born equally with the ſame rights, through every ſucceſſion of ages, no generation can annihilate or curtail the rights of a ſubſequent one. The *moral* right, indeed, of altering any goverement muſt always depend upon the particular circumſtances of the caſe, but the abſtract right is always veſted in the PEOPLE; of the moral

exercise of which (however they may occasionally abuse it) they must be, and they are, the proper and ultimate judges. What, therefore, the Solicitor General has said, that we have, now, *no right* to frame or alter the constitution, but that it is our duty implicitly to obey it, since it was established at the Revolution, and transmitted to us by our ancestors, I deny to be found reason, or salutary political doctrine. In adopting this position, I am fortified by the authority of Algernon Sydney, than whom a purer spirit never appeared before the tribunal of his maker; "Laws and constitutions (says he) ought to be weighed, and whilst all due reverence is paid to such as are good, every nation may not only retain in itself a power of changing or abolishing all such as are not so, but ought to exercise that power according to the best of their understanding, and in the place of what was either at first mistaken, or afterwards corrupted to constitute that which is most conducive to the establishment of Justice and Liberty. But such is the condition of mankind, that nothing can be so perfectly framed as not to shew some testimony of human imbecillity, and frequently to stand in need of reparation and amendments. Many things are unknown to the wisest, and the best men can never wholly divest themselves of passions and affections. By these means, the best and wisest are sometimes led into error, and stand in need of succession like to themselves, who may find remedies for the faults they have committed; *and nothing can or ought to be permanent but that which is perfect.* No natural body was ever so well tempered and organized, as not to be subject to diseases, wounds, or other accidents, and to need medicines, and other occasional helps, as well as nourishment and exercise; and he who, under the name of *innovation*, would deprive nations of the like, does as much as lies in him, condemn them all to perish by the defects of their own foundations. Some men observing this, have proposed a necessity of reducing every state, once in an age or two, to the integrity of its first principles: but they ought to have examined, whether that principle be good or evil, or so good that nothing can be ever added to it, which none ever was; and this being so, those who will admit of no change would render errors perpetual, and depriving mankind of the benefits of wisdom, industry, experience, and the right use of reason, oblige all to continue in the miserable barbarity of their ancestors, WHICH SUITS BETTER WITH THE NATURE OF A WOLF THAN THAT OF A MAN.' Sydney on Government, quarto edit. p. 405.

Gentlemen, we all know that the human mind is suffered to be active in the improvement of those civil arts, which conduce to the comfort and happiness of human life, I mean the mechanical arts; and shall the grand art of all, that of making men secure in the enjoyment of their acquisitions, I mean the art of government, be alone neglected, alone compelled to be stationary? But abandoning the principle and reason of the cases, the facts themselves contradict the

assertions of our adversaries. Our constitution has never been stationary. It has been in a gradual state of improvement; and a writer to whom this country had the honour of giving birth, I mean Hume, expressly tells us, that the history of England is little else "than a history of reversals." Do we not know that the acts of parliament are frequently set aside, and others directly contrary passed in their stead? By the treaty of Troyes, after the battle of Agincourt, which was regularly ratified and confirmed, and no opposition made to it, either by France or England, the two kingdoms were for ever unrepealably united under Henry V. Where is now the unrepealable union between England and France? Oaths were heaped upon oaths to bind the nobility of England never to violate any of the constitutions of Richard II. as Rapin assures us (vol. 1. p. 245.) where are his constitutions now? During three successive reigns, the national religion was three times successively changed by act of parliament. A more compleat tyranny cannot be conceived than William the Conqueror established over the people of England. Yet but a few reigns pass away, and the barons establish a legal right to redress their grievances by FORCE. Magna Charta says, '*Destringent et gravabunt nos*,' &c. The barons complaining and failing of redress, shall lawfully distress and aggrieve the king all manner of ways, as by taking his castles, land possessions, &c. till redress is granted. After the restoration comes the corporation act, and declares all resistance unlawful. The same doctrine is preached in the act of attainder, and militia acts. Not thirty years after this comes the Revolution, and abolishes the whole system of passive-obedience, and non-resistance; sends the whole royal family a packing, and brings in the house of Nassau. The liberty of the press was taken away by the 13th Charles II. The liberty of petitioning was abolished the same year; and then the corporation charters were taken away. All these were restored by the Bill of Rights. Do not then, gentlemen, these facts prove Mr. Hume's words, "That the history "of England is little better than a history of reversals." There are some men, I know, who see a spectre in every bush. Lord Nottingham, when the Union was in agitation, declared that the changing of the term England to that of Great Britain would subvert all the laws of England. And in our own days there are of the same description of men of whom we may say, that the word innovation, to use Mortimer's expression, "has frozen up their souls, like fish in "a pond." After all, the most useful discoveries in philosophy, the most important changes in the moral history of Man, have been innovations. The Revolution was an innovation; the Reformation was an innovation; Christianity itself was an innovation.

Lord Justice Clerk. You would have been stopped long before this, if you had not been a stranger. All that you have been saying is Sedition; and now, my lords, he is attacking Christianity.

Lord Henderland. I allow him all the benefit of his defence; but to compare the present situation of this country, with what happened

at the Revolution, when the forms of civil government and the liberties of the ſubject were done away by the infringement of all law; or with that period, in which the ſovereign is ſaid to have forfeited his life! I cannot ſit here without obſerving as was done in England, in the year 1745, when the rebels were tried; I cannot ſit here, as a judge and as a man, without ſaying that it is a moſt indecent defence. It is my duty to obſerve this; but I am for the pannel going on in his own way.

Mr. Gerrald. I conceive myſelf as vindicating the rights of Britons at large; and I ſolemnly diſclaim all intention of attacking Chriſtianity. I was merely ſtating the fact.

Lord Juſtice Clerk. Go on in your own way.

Mr. Gerrald. I think I may be allowed that at leaſt.

Lord Juſtice Clerk. Go on ſir.

Mr. Gerrald. I ſhould have been going on if your lordſhip had not interrupted me.

Gentlemen, the great charge againſt me is, that I came down here for the purpoſe of carrying on reform; and if I am not allowed to go into a vindication of theſe general principles, and an enumeration of particular abuſes, I may be condemned indeed, but I certainly am not heard. I was only arguing that the ſuppoſed principles charged upon me were ſuch as have been adopted by the beſt and wiſeſt of men; and if they can ſhew me, from higher authority, that they are unconſtitutional, I would inſtantly become a convert to their doctrines; but reaſon alone, and not aſſertion, can convert me. I ſhall now endeavour to prove to you that our object was perfectly conſtitutional.

Gentlemen, by a return of the repreſentation in parliament, an object which we feel equally intereſted in with all other Britiſh ſubjects, given us by a ſociety called the Friends of the People, many of whom are members of Parliament, and, among others, the illuſtrious Sheridan, (the brilliancy of whoſe talents can only be equalled by his diſintereſted attachment to the liberties of his country) it appears that in England 2611 perſons—return to parliament 327 members, and in Scotland 98 perſons elect 15, and the remaining 30 are elected by about 1400.

This is not an adequate repreſentation; but a mockery of repreſentation; and therefore not ſuch a repreſentation as the original principles of our conſtitution intended, or as the Revolution was meant to promote. Surely, gentlemen, it is not the ſemblance of a parliament that we want, not the mere *name* of a parliament, the *magiſtratuum vocabula*, as Tacitus well expreſſes it; but ſuch a parliament as ſhall preſerve our intereſts, and expreſs our wills. If the court's governing without a parliament was formerly the object of our terror; if its governing *with* a parliament is as juſtly the object of our wiſhes; its governing *by* a parliament is an infallible method, not only to compaſs, but give ſanction to our ruin. With regard to the firſt of theſe governments, our terrors have long ſlumbered; for,

while we ſo fully give, why ſhould the ſovereign take? But if ever the period ſhould arrive, when the Houſe of Commons ſhould invariably anſwer to the calls of the crown, though they ſhould be deaf to the cries of the people; that they ſhould purchaſe on the one hand, only to ſell on the other; that inſtead of redreſſing grievances they ſhould authoriſe them; inſtead of proſecuting malefactors, they ſhould ſcreen them; inſtead of protecting and defending the rights of their conſtituents, they ſhould perfidiouſly betray them; if ever ſuch a period ſhould arrive, I ſay, we might ſtill amuſe ourſelves with the word conſtitution; but hope itſelf would ſicken, as the conſtitution, in fact, muſt be every where undermined, and at the firſt ſound of the trumpet of deſpotiſm, like the walls of Jericho, would ſink into a heap of ruins.

Gentlemen, I was not drawing any parallel, when the bench interrupted me, between the ſtate of this country at this time, and the ſtate of it at the Revolution; but, I was laying down a principle, that if perſons in any given period had a right to meet for the purpoſe of bettering their government, they had the ſame right at every ſubſequent period. The Revolution was carried into effect by open *force*, but here there was no idea of force, which I truſt, I ſhall be able to prove. In our meetings there was no idea of any force at all, and therefore, inſtead of drawing a parallel between the ſituation of the country at that time, and at this, or of inculcating the propriety of having recourſe to force, we were doing directly the reverſe.

Gentlemen, I ſhall now briefly examine the principles, which the report of my ſpeeches in the convention attributes to me. It is there ſtated, that I ſaid 'no meeting of the people can be called a 'mob, if their deliberations be directed towards the public good; 'but if men meet for an oppoſite purpoſe, for promoting the mi-'ſery or the deſtruction of the human race, though they ſit down 'with crowns on their heads and ſceptres in their hands, they are 'truly a mob.'

Theſe, gentlemen, I hold to be moral and ſelf-evident propoſitions; that it is not the *poſſeſſion*, but the *juſt exerciſe* of power, which ſhould render it an object of reverence among men; and that the eſſential principles of vice and virtue are not altered by the practices of perſons in high ſtations—'*Promota juſtitia* (ſays, St. Auſtin) '*quid ſunt regna niſi magna latrocinia?*' 'If juſtice were laid aſide,' 'as this venerable father has well ſaid, the governments of the 'world would reſemble dens of robbers; and men would follow 'only thoſe who can inflict the greateſt puniſhments, or give the 'greateſt rewards;' but ſince the reception of ſuch opinions would be the extirpation of all that can be called good, we muſt look for another rule of our obedience; and we ſhall find that only to be the law, (I mean that Tully calls the *ſanctio rectua*) which being founded upon what eternal principle of reaſon and truth, whence the rule of juſtice, which is ſacred and pure, ought to be reduced,

and not from the depraved will of man, which fluctuating, according to the different intereſts, humours, and paſſions, that at ſeveral times reign in ſeveral nations, one day abrogates what had been enacted the other. This ſentiment, then, juſt and reaſonable in itſelf, can never be conſtrued into a reflection upon the preſent government; unleſs you ſuppoſe that which I never aſſerted, namely, that it *is applicable* to the preſent government; in which caſe you muſt commit the very offence which you are called upon to condemn, and attribute thoſe motives to the particular magiſtrates of our own country, which I only ſuppoſed might occaſionally influence the conduct of many.

I am next charged with ſaying 'were all mankind to aſſemble 'in public meetings, one of two things muſt follow; either they 'will behave properly or improperly; if properly, their meeting 'will tend to good; if improperly, it carries its own cure along 'with it. The people will be ſoon brought into a better method 'by a ſenſe of ſelf preſervation, by which they will correct the er-'rors into which they have fallen.' Than this ſentiment, gentlemen, I conceive nothing can be more innocent, and more ſtrictly and logically true. By the "aſſembly of the whole community" I certainly did not mean what a learned lord, in his argument on the relevancy, erroneouſly, I hope not intentionally, ſtated to be my meaning, the meeting of all the people in their collective capacity, which would impede buſineſs, and give riſe to tumults. No.—I meant the meeting of the people in their repreſentative capacity—but, ſuch a repreſentation as ſhould collect and expreſs their wills, as really and truly as if they had been aſſembled in their *collective* capacity. A fair, full, and complete repreſentation—not a deluſive viſion, an empty phantom, an unreal mockery. This I can alſo inform his lordſhip was the only ſenſe conveyed by my words, '*the great art of government is that all ſhould be governed by all*',—words, (which his lordſhip thought proper to ridicule becauſe he did not underſtand them,) and which, beſides their own intrinſic weight have been adopted by wiſe and virtuous men, both in ancient and in modern times. "This therefore, (ſays, Sir William Temple, when ſpeaking of the conſtitution of the ancient Germans, from which our own is, as we have ſeen, derived) is that conſtitution, which has been celebrated as the trueſt and the juſteſt temper that has ever been found out between dominion and liberty; and it ſeems to be a ſtrain of what Heraclitus ſaid was the only ſkill, or knowledge of any value in politics, which was *the ſecret of governing all by all*" (*Sir William Temple, Miſcellanies part* ii. *p.* 255.) Surely, if ever there was a principle of plain ſenſe, this is one; for who ſo likely to promote their own intereſts as the perſons moſt concerned in it? Who ſo eager to apply the cure, as thoſe who feel moſt acutely the ſmart of the diſorder?

Gentlemen, I am further charged with having ſaid, that "if governments were to inſtruct the poor inſtead of hanging up their

bodies on gibbets, the voice of the people would then be the voice of God." Now, what do theſe words amount to? Why, that ſince every government claims a *right* to puniſh, it is previouſly bound to inſtruct the ſubject in what he ſhould do to avoid it. For, as the juſt powers of government, as we have before had occaſion to obſerve, are derived from the people; ſo no people either will delegate, or can have a right to delegate, to any ſet of men, the power of wantonly inflicting pain upon them; which, undoubtedly, would be the caſe, if the ſubject could, without injuſtice, ſuffer the penalty of a law, even though he had not been previouſly told of its exiſtence. I ſpeak not, now, of thoſe moral laws which pure native intellect enables us to diſcover, and which may be read, as Dryden ſays, without the *ſpectacles of books*, but merely of thoſe poſitive regulations of ſociety which mere human intellect alone cannot know to be breaches of duty, unleſs previouſly inſtructed. In theſe caſes, then, to withhold inſtruction is, on the part of government, not merely the omiſſion of duty, but the commiſſion of a crime; and ſociety ſins againſt the man before the man can ſin againſt ſociety. I therefore infer, that inſtruction alone can conſtitute a duty, and that laws can enforce no obedience but where they are explained. This, my lords, is not factious doctrine, nor calculated to weaken the principle of obedience to the laws: they are preciſely the ſentiments of Sir William Blackſtone, a judge whoſe principles were moſt unqueſtionably loyal, and who makes exactly the ſame diſtinction, as I have done, between the *mala prohibita*, and the *mala in ſe*; Blackſtone's Commentaries, Vol. iv. p. 8. between offences againſt the law of nature, and offences againſt the ſtate. The lawfulneſs of puniſhing criminals, ſays he, is founded upon this principle, that "*the law, by which they ſuffer, was made by their own conſent*; it is a part of the original contract into which they have entered, when firſt they engaged in ſociety; it was calculated for, and has long contributed to their own ſecurity." Now, if the conſent of the puniſhed be the only lawful principle of authority on the part of the puniſher, that conſent muſt be either expreſs or implied. That it is an *expreſs* conſent, it can never be contended, and as to an *implied* conſent, we are ſtill authoriſed to aſk, what is the ground of the implication?

The publication of an act of parliament (the only mode of publication which government condeſcends to make uſe of) by the king's printer, only—in the old German character, which few men can read—and which is ſold at a price which as few can afford to pay, rather reſembles the behaviour of Caligula, the Roman tyrant, who (according to Dion Caſius) wrote his laws in a very ſmall character, and hung them up on high pillows, the more effectually to enſnare the people, than the conduct of a legiſlature, whoſe authority, being founded on the *conſent of the people*, muſt, of courſe, *break their truſt*, whenever they violate the principle which created them.—To read to the priſoner, for *the firſt time*, when he ſtands at the

tribunal, any act, for the breach of which he is arraigned, is to him preciſely the ſame thing as it would be to originate it at the time by the ſame tribunal, for the expreſs purpoſe of condemnation. In ſuch caſe, indeed, he may periſh by the forms, but certainly not by the principles of juſtice. Sir William Blackſtone alſo regrets the frequency of capital puniſhments to be found in our code; and feelingly ſays, 'that it is a melancholy truth that 'among the variety of actions which men are daily liable to com-'mit, no leſs than *one hundred and ſixty have been declared by act 'of parliament to be worthy of inſtant death;*' and adds, 'that ſo 'dreadful a liſt inſtead of diminiſhing, increaſes the number of 'offenders.'

Gentlemen, it was upon a painful review of this ſubject, that I aſſerted that 'government had far better inſtruct the people than 'hang up their bodies on gibbets;' for as there is ſomething in the nature of man, that ſo ſevere puniſhments have never been found effectual to prevent any ſort of crime. The moſt effectual way to prevent crimes is, to prevent the temptation; to take care that the people be educated in virtuous principles, and every man brought up and enured to labour and induſtry, that has no eſtate to ſubſiſt on. If this be not done laws may be avenged but cannot be obeyed; they may inſpire terror, but can never command reſpect.

Gentlemen, I muſt obſerve, and I think it lies within the compaſs of my defence to ſtate to you, that we can only be innocent in coming down for the purpoſe of procuring reform, upon this ſuppoſition that reform was neceſſary, and if I had not been allowed to go into the proof of that fact, I ſhould ſtand in this melancholy ſituation—that a charge would be brought againſt me, and the only proper means of repelling that charge would be denied me.

Gentlemen, I now come to the diſſection of the evidence, which I truſt, you will find to be ſo ſcanty, and inſufficient, as that it is impoſſible to fix upon me any well-grounded and colourable charge of ſedition.

Gentlemen, the phantom conjured up to terrify the timid, the Meduſa's head which is to petrify you all with horror and aſtoniſhment, is the motion attributed to Mr. Sinclair, (but which I ſhall, ſhortly, prove to you never paſſed) which not only inculcated the principle of reſiſtance, but with the Britiſh Convention it is aſſerted meant to carry into execution.

I was not a little ſurpriſed to day, to hear this legal and conſtitutional principle denied in round and unqualified terms; when it ſhould be recollected, that it is to this principle we owe our liberties. The right of ſelf-preſervation, is a right of which no human inſtitution can diveſt us, ſince human inſtitutions themſelves, were formed only the more completely to accompliſh that

end. To support any political institution, therefore by the destruction of that principle would be absurdly to sacrifice the end to the means. 'If the laws of God and men (says Sydney) when 'the magistracy is left at liberty to break them, and if the lusts 'of those, who are too strong for the tribunals of justice cannot 'be otherwise restrained than by sedition, tumults, and wars,— 'those seditions, tumults and wars, are justified by the laws of 'God and man. Sydney on government, p. 188. For as all magistrates were set up for the good of the people; so whenever they act contrary to the end of their institution, they may be lawfully opposed; *Quia eatenus* (as Grotius well observes) *non habent imperium*. De Jure Belli, l. 1. c. 4. Here then, gentlemen, you see the principles of resistance laid down by a writer on the civil law (with whose works, their lordships are, possibly far better acquainted than I,) and recognized also by that sage and hero the immortal Sydney, who, after a life spent in a continual struggle against vice, tyranny and faction, fell a martyr at last to the liberties of his country. The sentence passed upon him, however, by the infamous Jeffries, has met with the unanimous execration of posterity, and his attainder was accordingly repealed among the first acts which took place at the Revolution.

Gentlemen, were I called upon to give a definition of sedition or of rebellion, I would frankly avow, that I know of no other than this; the *conspiracy of the law against the interests of the many*. And this rebellion may be equally carried on by those who are entrusted with the power of the state, as by those who originally conferred it, and who are the objects of its exercise. 'If those 'who by force take away the legislature,' says Locke, 'are *rebels*, 'the *legislators themselves*, as has been shewn, can be no less esteemed so, when they who were set up for the protection and preservation of the people, their liberties and properties, shall invade 'and endeavour to take them away: And so they, putting themselves in a state of war with those, who made them the protectors 'and guardians of their peace, ARE PROPERLY, AND WITH THE 'GREATEST AGGRAVATION REBELS.' Treatise on Government, octavo edition, p. 294, 5.

This principle of resistance, gentlemen, is deeply interwoven in our constitution, and is as strongly laid down, even by writers on our municipal law, as it is by those, who are philosophical and speculative. 'The liberties of Englishmen (says Blackstone, Vol. I. 'p. 144.) should be perfectly known and considered by every man 'of rank and property lest his ignorance of the points whereon 'they are founded should hurry him into faction and licentiousness 'on the one hand, or a pusillanimous indifference and *criminal sub-* 'mission on the other.' Nor do I apprehend that this knowledge of the rights of Britons, is to be limited merely to men of rank and property since the poor man is, and by the same means too, equally entitled to the preservation of his *mite*, as the rich man to the enjoyment

of his millions. And of this opinion alſo ſeems to be the learned judge, when, ſhortly after, he ſays 'to vindicate theſe rights, when 'actually violated or attacked, the *ſubjects of England* are entitled, in the firſt place,' (the word ſubjects is certainly equally applicable to all deſcriptions, high and low, rich and poor) 'to the regular 'adminiſtration and free courſe of juſtice in the courts of law; 'next, to the right of petitioning the king and parliament for redreſs of grievances; and laſtly, to THE RIGHT OF HAVING AND 'USING ARMS FOR SELF-PRESERVATION AND DEFENCE.' Vol. I. p. 144. Thus you ſee, gentlemen, that theſe principles are neither new nor dangerous; not new, becauſe co-eval with the Revolution; not dangerous, becauſe avowed by a calm philoſophical writer who enjoyed the favour and patronage of his ſovereign, and ſince ſupported by the authority of an eminent writer whoſe office it was to lay down the principles of law, and adminiſter juſtice to the ſubjects of theſe realms.

Gentlemen, I defy our bittereſt enemies to prove that it was ever our intention to make any practical application of theſe doctrines; for, as the ſame learned judge well obſerves, "all oppreſſions, as they may happen to ſpring from any branch of the ſovereign power, muſt neceſſarily be out of the reach of any *ſtated rule*, or *expreſs legal* proviſion;" ſo I ſay with him alſo that "if ever they unfortunately happen, the *prudence of the times muſt provide new remedies upon new emergencies.*" Blackſtone, Vol. I. p. 245.

Gentlemen, I ſhall now ſtate to you, as ſhortly as I can, what was ſaid by the witneſſes. Mr. Scott ſays, I think, among other things, that when he came into the convention, on the 6th of December, he aſked the chairman the object of our meeting. The reply was, that we were met for the purpoſe of addreſſing the king.

Mr. Davidſon tells you, indeed, that he came for the purpoſe of diſperſing the meeting. He was aſked, alſo, if there was any appearance of tumult. He anſwers in the negative; that there was no appearance of tumult and diſorder, though the preſident was forcibly taken out of the chair; to whom he, at firſt gave a friendly ſhake, though he was afterwards obliged to convert it into a Corniſh hug. WE, then, gentlemen, were the perſons who were forcibly aſſaulted; but we did not make uſe of force for the purpoſe of repelling force.

Gentlemen, the external proofs that have been alledged, particularly of this reſolution which was ſaid to have paſſed, amount to what? They amount, in fact, merely, to this, that a number of papers were taken from a public Inn by the officer, and put into a looſe bundle; then taken by him to the ſheriff's office, where they were left for ſome time, without any particular attention being paid to them; certainly in ſo looſe a ſtate that it was very poſſible for any other papers to have been put in; conſequently all degree

of credibility due to the evidence is done away, inaſmuch as they were not ſealed, though I underſtand it is always the cuſtom to ſeal up papers, as it appeared from the evidence delivered to-day at the bar. For, I conceive that, after they have been in that looſe ſtate, it is impoſſible ever to identify theſe papers, unleſs the man has the faculty of looking through a pocket handkerchief. How is it poſſible, if the papers had been taken and put into a looſe bundle, and ſuffered to lie a conſiderable time without any actual inſpection, and ſeveral perſons being in the room; how is it poſſible, I ſay, that theſe papers can be proved to be the ſame that were taken out of the room of Mr. Sinclair?

Gentlemen, you will find one material circumſtance, however, to which, I truſt, you will give your moſt mature conſideration, to which is, that an attempt to identify thoſe papers ſhould, by all regular and due courſe of evidence, have been made, before they are produced to the jury, as the ground of criminating any pannel at this bar; for, if they are not indentified, I do not ſee with what colour of juſtice they can be brought forward for the purpoſe of criminating any perſon. This paper is not proved ever to have been adopted as a reſolution by the convention. It no where appears, even in what is called the minutes of the convention, but which I deny to be the minutes of the convention; nor is there any proof that ever they were adopted by the convention *as* their minutes. It ought to have been proved in the hand writing of Mr. Sinclair who is the reputed author of this motion; and even if an attempt to identify his hand-writing had been made, even then I ſay the evidence would ſtill have reſted upon a very precarious foundation. In the caſe of Algernon Sydney, it was a ſimilarity of hand-writing that was the principal ground of his conviction. That very circumſtance, alſo, gentlemen, is recited in the act of parliament as one of the principal grounds of reverſing his attainder; though the paper alluded to, was found in the cloſet of Colonel Sydney, as this paper is ſaid to have been found in the room of Mr. Sinclair. Sydney himſelf well obſerves, upon his trial, "that ſimilitude of hands is nothing; as hands may be ſo counterfeited, that no man ſhall know even his own hand. A gentleman that is now dead," ſays he, "told me that my Lord Arlington, about five years ago, deſired him to write a letter and ſeal it as well as he could. He wrote it with care, and ſealed it with a wafer and wax upon it; and within a few days my Lord Arlington brought him five letters, and he did not know which was his own." Trial of A. Syd. p. 31. If, then, gentlemen, even if there had been actual proof that this was in the hand-writing of Mr. Sinclair (a circumſtance which never could be proved, and which has not this day been attempted to be proved), if ſuch actual proof, I ſay, would not have been admitted as ſufficient evidence to criminate Mr. Sinclair, inaſmuch as the motion in queſtion never became part of the minutes of the convention—far leſs ſhould this ſcroll of paper condemn me, who am only accuſed of verbally ſup-

porting the *written* motion which Mr. Sinclair is ſaid to have made. If upon the trial of this excellent young man, who, at a period of life, which the greater part of mankind conſume in frivolous or vicious diſſipation, is dedicating his whole time to promote the happineſs of his fellow-creatures; if upon a ſubſequent trial an honeſt and impartial jury ſhall, as they muſt, acquit him of the charge, both upon a general conviction of his innocence, and particularly, upon the inſufficiency of the evidence brought againſt him, what muſt be the remorſe, what the anguiſh of that jury, who ſhall have condemned the acceſſary upon that very evidence, which, on the fulleſt inveſtigation, ſhall have been found incompetent to the conviction of the principal? This event, were it poſſible to happen, I ſhould moſt deeply deplore, not merely on account of my own perſonal ſufferings, but for the ſcandal it would affix to the adminiſtration of juſtice, for the diſgrace it would bring upon our common country; and, above all, for the deep and laſting infamy that it would entail upon you, my countrymen, gentlemen of the jury. In ſuch caſe, the principle of my condemnation would even be worſe than that of Sydney; poſterity would review it with equal abhorrence, and therefore let me conjure you, as you tender not only *my ſafety*, but your own *perſonal reputation*, ſuffer not the iniquities of *thoſe* times to be revived and imputed to theſe.

Mr. Mack tells you, that he did not get the papers from Lyon, that they were lying in the room in the ſheriff-clerk's office careleſsly. Mr. Skirving's papers were ſealed it ſeems; but this motion upon which the great ground of criminality is laid, is ſuffered to lye looſe. If that precaution was not taken equally in all caſes, I certainly ought not to ſuffer for the negligence of the officer.

There is one certain and infallible proof, gentlemen, that this motion, upon which ſo much ſtreſs is laid, never did, in reality, paſs in the convention. It has come out in the evidence, that the motion was marked by Mr. Aitcheſon—if then, it was marked by him, it clearly could not have been adopted by the convention; for if it had, it would have gone into the hands of the Secretary, who would have marked it with his own ſignature, and it would have conſtituted part of the minutes. On the contrary, you have ſtrong circumſtantial proof (the beſt that the nature of the caſe will admit) that ſo far from paſſing in the convention it was even laid aſide; inaſmuch as it was only marked by Aitcheſon, and not by the ſecretary whoſe practice it was invariably to mark them as an eſſential preparative to their inſertion in the minutes. Beſides, gentlemen, where was this paper found? Was it found in the poſſeſſion of Mr. Skirving, when *all* his papers were ſeized, and to whoſe cuſtody all reſolutions that paſſed in the convention was regularly committed? No; it was not even pretended to have been ſo found; it is ſtated to have been found in the cuſtody of Mr. Sinclair alone who was a ſimple member of the convention, and who was never entruſted with the guardian-

ſhip of its minutes. This ſingle fact renders all reaſoning upon the ſubject unneceſſary. It amounts to a moral demonſtration of what I advance; and he who would not be convinced by proof ſo glaring, and facts ſo undeniable, would not receive *conviction though one ſhould riſe from the dead.*

Gentlemen, you no doubt, are well aware, that it is the duty of jurymen to find the verdict *ſecundum alegata et probata, according to facts alledged and proved.* Many principles contained in thoſe ſpeeches attributed to me I glory in having uttered, as they are perfectly reconcileable with the ſoundeſt principles of government and good order. But there are parts of thoſe ſpeeches which are falſe and ſpurious. Animated as I am, with a love of truth, and determined to tell it at whatever hazard, I will neither aſſume what I *have not* ſaid, nor deny what I *have ſaid.* If then, you give me credit, which, I am ſure, as honeſt men you cannot withhold from me, for my veracity and openneſs in one inſtance, you have no right to miſtruſt me in another.

I have already told you, that as jurymen you are bound to find a verdict according to facts alledged and proved. I, now, gentlemen, will ſeriouſly aſk what evidence have you, that the ſpeeches charged in the indictment, and which are copied from the Gazetteer, are the real ſpeeches which I made in the convention? What is the mode of proof? Thomas Cockburn tells you that he had a *general* collection, when he was in the habit of reading the Gazetteer, that they bore a reſemblance to the ſpeeches which he has heard me make in the convention. Gentlemen, I truſt you are well aware of the ſacred duty which you are now to execute, and that you will be of opinion, that in a caſe ſo ſolemn as the preſent, a bare general collection of what is ſaid, or ſuppoſed to be ſaid, in the heat of debate, will never conſtitute a ſufficient ground of criminal conviction. I allow, that in the ordinary intercourſes of life, a general collection is certainly ſufficient ground whereon to form a judgment, otherwiſe human affairs muſt ſtand ſtill. But you are not now met for the ordinary purpoſes of life; you are met to determine the guilt or innocence of a man, accuſed, on the one hand, of having diſturbed the peace, and eſteemed on the other, for having attempted to promote the good of his country; and upon your determination will reſt, not only his fortune and his fame, but, in all probability, his life itſelf. What then is the evidence upon which this great ſtake depends? Mr. Cockburn, when preſſed by my counſel, who, through the whole courſe of the cauſe have conducted themſelves, not only like able counſel, but like firm and inflexible patriots, ſays, that he cannot identify one ſingle paſſage. What does this confeſſion amount to? That he cannot ſwear they are the ſpeeches I made; for, if the terms general recollection have any meaning at all, I apprehend they have this meaning, that all general recollections are compoſed of the recollection, of ſome *particular* paſſages. Now, he does not identify one ſingle paſſage. Some of them you may deem criminal, and others innocent; nay, even meritorious; and therefor

I presume you cannot convict any pannel upon such loose indeterminate evidence ; which is, at least, as likely to fix upon him what is praise-worthy, as it is to charge him with what is criminal. But he recollects, 'a great many words interspersed in that speech.' Why, doubtless, gentlemen, when Mr. Cockburn had heard any person speak for a considerable length of time, he must have some recollection upon his mind of what had passed ; but I trust that words interspersed through a speech are certainly too loose to found a verdict of conviction of a far less crime than that of which I am accused, and to authorise a punishment of far less severity than such as if convicted I shall inevitably suffer.

This gentlemen is, so far as concerns the first speeches. But of the second speech he says he recollects less than of any other ; though this is the speech upon which Mr. Solicitor General chiefly founds his charge, and against which he has planted the whole artillery of the law. After all, gentlemen, the witness, though closely pressed in his examination by the crown lawyers, closes his evidence with these remarkable words '*that he does not mean to identify any of the speeches.*

Gentlemen, if the freedom and lives of British subjects are dependant upon the loose and general recollection of words spoken too at a considerable distance of time, we may, indeed *boast* our liberties and the benignity of our laws, but they are merely an *empty boast*, and not a solid and substantial good.

But, gentlemen, there is one circumstance still stronger than any I have stated to you. If any person might be supposed to retain an accurate recollection of the speeches, it must be William Ross, who being able to write short-hand, would in all probability carry away with him, with more accuracy than any other person, the speeches which are attributed to me. Ross tells you, he never took notes by the express direction of the convention, nor ever published them by their order. Now, if charges of criminality are to be brought forward against men upon such loose evidence as this—the unauthorised transcript of a short-hand writer, and which transcript, or even verbal evidence, is to be taken as proof—we must deem the judicial process of our country not a shield of protection, but a rod of chastisement. Persons actuated by malicious motives, the retainers of a profligate administration, may enter the meetings by a short-hand writer, and, for a small gratification, may induce him to take down, as the speeches of any member, words highly criminal, but which at the same time have never been spoken ; and afterwards, by procuring them to be inserted in a newspaper, may subject the party to a state prosecution. Against this engine of persecution what remedy has innocence ? Why, the party aggrieved, may prosecute the printer for a libel, I mean if he has money, for that is a necessary ingredient to the attainment of justice : and if he has none, however deep the injury, and calamitous its consequence, he must sit down silent under the charge, until he has an opportunity of

vindicating his innocence in court when the Lord Advocate, who is, *ex officio*, the guardian of our liberties, ſhall be graciouſly pleaſed to drag him, as the ill-fated victim of a ſtate proſecution.

Gentlemen, the rules of evidence, being all founded upon the plain principles of common ſenſe, muſt in all countries be nearly the ſame. In an Engliſh Court of Judicature the evidence produced againſt me would, I am certain, be deemed incompetent to a conviction on the ſlighteſt charge. Why then in Scotland ſhould not an equal meaſure of juſtice be meted out to me, an Engliſhman, which you, though Scotſmen, would in England readily obtain?

Furthermore, Roſs the ſhort-hand writer ſwears that he is not very well ſkilled in his art—which, even in the moſt ſkilful, is a fallacious mode of identifying a ſpeech—nay, that he was afflicted with deafneſs when he attended the convention, and, having frequently loſt the thread of my diſcourſe, inſerted of his *own invention*, a great part of that which appeared in his paper. Gentlemen, is not this ſingle confeſſion ſufficient totally to deſtroy the identity of the ſpeeches, and conſequently the ſolidity of the evidence againſt me? A queſtion was aſked by one of the jurymen which carried with it an apparent weight—whether any of the convention had complained that their ſpeeches were inſerted or miſrepreſented? To which Roſs anſwered, No. I am ſure you cannot but be aware, that if the members of the convention had been in the conſtant habit of complaining of all the miſrepreſentations which the lying breath of rumour had circulated againſt them—if they had thought it neceſſary formally to contradict whatever malice propagated and credulity received—the object of their miſſion muſt have been entirely abandoned; and inſtead of aſſerting thoſe principles which we felt to be juſt, our time would have been conſumed in refuting aſperſions which we knew to be falſe. No! gentlemen, we reſted upon the conſciouſneſs of our innocence, and upon the broad baſis of public confidence, to which our honeſt and diſintereſted exertions had given us a claim.

George Roſs depones, that I had no knowledge of the inſertion of the words, *Ca ira, Vive la Convention, Liberty Hall, &c.* but that he himſelf was the perſon who inſerted them. I ſhould not have repeated this inſignificant circumſtance, but that I obſerve unfair inferences have been drawn from them, in order to load us with additional guilt.

Gentlemen, I hold this to be a ſound principle both of reaſon and of law, that if you once can prove that any meeting was in itſelf legal, though after the meeting any illegal reſolutions were adopted, provided it cannot be proved that you were preſent at thoſe meetings aiding and abetting thoſe illegal reſolutions ſo paſſed, no degree of criminality can poſſibly attach to you.

You are then to advert to the general principle which proves the illegality of the meeting, and not to the particular reſolution which if you did not ſupport can never be brought in evidence againſt you. Much ſtreſs has been laid upon this committee of ſecrecy, upon which

very ſtrange and contradictory language has been held by the public proſecutor. Sometimes we are repreſented as a ſet of deſperadoes, who met in open day for the purpoſe of violating the laws and the ſubſiſting conſtitution of the country; at other times that we met in holes and corners, as our projects were ſo nefarious that they could not bear the light. To round the circle of contradictions, a learned judge upon the bench has declared, "that however criminal our intentions, our conduct was open, and in this reſpect our imprudence "was equal to our guilt." By theſe various and even oppoſite charges, the puniſhment inflicted by the Sicilian tyrant is realized upon the unfortunate members of the convention--ſtretched upon the iron bed of legal torture, if too long we are lopt, if too ſhort we are ſtretched. If we act with openneſs, there our candor is audacious guilt; if ſecretly, we only refrain from inſulting our country by the publicity of our meaſures, that we may in greater ſecurity accompliſh her ruin. Seven men, it ſeems, were deemed ſufficient by this reſolution, to conſtitute a convention, which was to overturn the government! Abſurd and impoſſible ſuppoſition! Were our rebellious troops, like thoſe of Mr. Hayes, at Brentford, to ſtart up when called for? Or, is it ſuppoſed that we were to realize the fable of Pyrrha and Deucalion, and generate men by caſting ſtones behind us? The very ſuppoſition of your giving the ſmalleſt degree of credit to this abſurd allegation, would reflect ſuch diſgrace upon *your* underſtandings, and is ſo highly derogatory to the Britiſh Conſtitution, the principles of which are the objects of univerſal reverence, that I cannot entertain it for a moment. For feeble, indeed, muſt the foundation of that conſtitution be, which can be even endangered, much more overturned, by a meeting of no more than ſeven individuals.

Gentlemen, from a particular expreſſion ſtated in this indictment, *calamitous circumſtances*, you muſt ſee that we looked upon every invaſion to be calamitous, from whatever quarter it proceeded;—but, if we had intended to make an open oppoſition to the laws of our country, or were plotting its deſtruction ſecretly and in the dark, we ſhould, certainly, never, have uſed an epithet of that deſcription. The very inſertion of the term calamitous proves to a moral demonſtration that all invaſions, from whatever quarter, would have been deemed objects not of approbation, but of regret.

Gentlemen, it has been ſaid, that the admiſſion of foreign troops into Great Britain was alſo one of the calamitous circumſtances which would induce the convention to meet again. To this charge, if it will avail any thing to the public proſecutor, I freely plead guilty. As a Briton I ſhall ever think myſelf bound to watch with anxious attention the introduction of any foreign troops, and upon this plain principle, that I conceive the native valour of Britons is always adequate to their own protection. If it be otherwiſe, we hold our freedom by the moſt brittle tenure--for as foreigners can

have no common intereſt with Britons, the ſame mercenary arm which protects us for pay may enſlave us for plunder. But what does this reſolution ſtate? That we will do any thing *unconſtitutional?* Far from it. It ſtates that " we ſhall follow the wholeſome example of our anceſtors, by paying no regard to any act which ſhall militate *againſt* the conſtitution of our country." Now, before government can properly make this reſolution a ground of criminal accuſation againſt us, they muſt confeſs that they either had paſſed, or meaned to paſs an act, *militating againſt the conſtitution.* For under no other circumſtance was any oppoſition mentioned, or intended. Is it not rather ſingular then, that before they can infer *our* guilt, they muſt confeſs *their own?* Acts of parliament are in general ſacred things, but they may be, in *particular caſes*, ſo grievous and oppreſſive, that human nature will revolt from them. The conſtitution, as Treaſurer Burleigh long ſince obſerved, can never be undone but by a parliament; which proves however, that a parliament *may* undo it. In the reign of Henry VIII. an act of parliament was paſſed, giving to the proclamations of the crown the validity of a law. It was alſo made a capital offence for any perſon to foretel the death of the king—in conſequence of which, Sir Anthony Denny, his phyſician, when he lay at the point of death, was afraid to mention to him the danger of his ſituation. To judge or *believe* that Anne Cleves was not a virgin when ſhe married him was declared high treaſon. Until very lately for a gipſey to remain twelve months within the kingdom was declared felony without benefit of clergy. In Scotland, Evenus the third king of that name, cauſed a law to paſs, by which the wives and daughters of noblemen were expoſed to his luſt, and thoſe of the commons to the luſt of his nobility. *Tulit legem Evenus ut cuivis liceret, pro opibus quot alere poſſet, uxores ducere; ut rex nuptias ſponſarum nobilium, nobilis plebeiarum prælibarent pudicitiam, ut plebeiorum uxores cum nobilitates communes eſſent.* BUCH. L. 4. c. 14. Many other acts might be mentioned which have long blotted and diſgraced the ſtatute book; are theſe acts, then, in the eye of reaſon, proper objects of obedience? Nay, are they not rather honoured in the breach, than the obſervance? " Laws," ſays Hooker, " muſt be obeyed, *unleſs there be reaſon ſhowed that the law of reaſon, or of God, doth enjoin the contrary,*" ECCLES. POL. B. 1. ſec. 16. Which plainly implies that there are bounds to the civil obedience of the ſubject. Acts, then, which are ſubverſive of our happineſs, are contrary to every right of civil ſociety and comfort, utterly incompatible with all laws either moral or revealed, and therefore mere acts of power, having neither the force nor validity of a law. But I deny that it was ever the intention of the Convention to reſiſt any acts by *force.* The words of the reſolution are, " unleſs compelled to deſiſt by ſuperior force." What was this force to be ſuperior to? Why, forſooth, to twenty-one members peaceably met, and peaceably diſcuſſing political ſub-

jects. Nay, do not the very words themselves plainly import, that though the mere *mandate* of the magistrate (as such a mandate would be a gross violation of the law which he was bound to observe) would be disregarded by the Convention, yet the appearance of *force* would be the signal of dispersion? For upon what principle of common sense, or probabilities, can it be supposed that we should have wantonly exposed our lives to certain destruction by an appeal to arms; we, few in number, peaceful in intention, without ability to act, without hope to succeed, without power, without influence, without motive, without means?

But the sincerity of this declaration has been already evinced by a fact of recent date and public notoriety. When Mr. Sheriff Davidson, on the last evening on which the Convention sat, entered the hall, attended by constables and other officers, belonging to the *civil* power only, did the slightest symptom appear of an inclination to resist? No; Mr. Margarot and myself, who successively acted as presidents that evening, were indeed forcibly pulled out of the chair; because, as we were conscious, that we could not be *legally* ordered to quit it, a voluntary abdication would have been justly interpreted as a dereliction of our right. But did we resist, I again repeat? No; Mr. Davidson's testimony this day, has confirmed my assertion. We dispersed, he tells you, without tumult or disorder. It was we, then, against whom force was employed, but who employed none. We *suffered* injury but *offered* none.

The introduction of foreign troops into the kingdom, *without the sanction of parliament*, is an infringement of the Bill of Rights, and a violation of the constitution of our country. Doctrines, I know, have been openly avowed by the minister, justifying the measure as legal and constitutional; but this avowal, I believe, struck every one who heard him, his own creatures excepted, with horror and astonishment; nor do I apprehend, that at a future though not distant period, he will be fond of repeating what in the plenitude and insolence of power he has lately advanced.

Lord Stanhope, who is a member of that legislature which ought to be the peculiar guardians of our rights and privileges, and who, I believe, is as incorrupt a senator as ever this country gave birth to, since, like another Socrates at Athens, he preserves himself free from the contagion which is every where raging around him; Lord Stanhope, I say, with his accustomed honest daring thus expressed himself upon the subject of which I am now speaking "Armies (said he) have in all ages been the engines of tyranny, and by them the civil rights and liberties of all nations have been destroyed. The measure is of itself such a flagrant violation of the constitution, that if the same arguments are used in support of it in this house which have been used in another place, I make no difficulty in declaring that the authors and abettors of such blasphemous doctrines *ought not to survive their treason*. I feel (continued he) as little difficulty in declaring that IF THOSE TREASONABLE DOCTRINES ARE ATTEMPTED TO BE PUT INTO EXECUTION BY THE EXE-

CUTIVE GOVERNMENT, IT THEN BECOMES THE DUTY OF THE PEOPLE TO RESIST FORCE BY FORCE." If then, this excellent man could hold, with impunity in the senate himself, and in the presence of the great officers of state, these bold but constitutional doctrines, upon what pretext of law, or under what colour of justice can you presume to punish me, who have merely stated *hypothetically*, what he has advanced, plainly, openly, unconditionally?

Gentlemen, I cannot but observe one very unfair suspicion which the crown lawyers have endeavoured to infuse into your minds during the course of these trials. In order to inflame your passions, at the same time that they may assume to themselves an *appearance* of lenity, they tell you that the crimes with which we stand charged approach very nearly to high treason; and an appeal, not very honourable I think to the appellants, is continually made to old and obsolete statutes, on which state prosecutions were grounded when tyranny was at its height, to prove, that had we fallen, like the apostles of freedom, in the last century, on those 'evil days,' like them too we should have been the victims of a legal tyranny. This procedure I must consider as abhorrent, from the cool and sober rules of justice. Suffer not, therefore, I conjure you, your tempers to be inflamed, to the destruction of an innocent man, because the public prosecutor, in the rage and phrenzy of loyalty, has though proper to dig into the dusty rubbish of antiquity, under which the embres of despotism have long been smothered, and to 'awaken those sleeping 'lions by rattling up a company of old records which have lain for 'so many ages by the wall neglected and forgotten*.'

Gentlemen, another circumstance, upon which much stress has been laid, is that of a blank appearing among the minutes; and as this blank followed after the resolution which we have just now been discussing, it has been unfairly inferred, that it was our intention to fill it up with matter, at a proper and convenient season, the publication of which would have amounted to high treason. But, gentlemen, if you will turn to the minutes, you will find that there is not one blank alone, but many. And this circumstance, when coupled with the observation of the Solicitor General, must convince you how extremely dangerous it is to condemn any man upon the evidence of these minutes, which have been so long in the possession of those who are the officers and dependents of government. For, as state prosecutions are frequently the instruments, by which a profligate administration sacrifice the bold and incorruptible exposers of their measures, so it is always in the power, as, no doubt, it must be frequently in the inclination of the public prosecutor, to fill up the blanks with more heavy and additional matter, which being confounded with the original minutes, may be offered in evidence to a jury, as a sufficient ground of conviction for high treason.

* See Lord Stafford's Speech in the State Trials.

The difference of process and of the criminal codes of Scotland and England must, to every thinking mind, be a subject of most serious alarm. In the southern part of the kingdom, nay, in the capital itself, the seat of the legislature, and the fountain head of all justice! men are suffered to meet under the very beard of the Secretary of State, and to pass with impunity resolutions exactly corresponding in principle, and equally strong in expression with those, which if passed in Scotland, will send both the mover and seconder, in company with thieves, felons, and murderers, to toil and perish on the bleak and inhospitable shores of New-Holland. Is the Tweed then, which the God of nature has made only to be a geographical separation between the two countries, by the folly and wickedness of man to be perverted into a legal, a moral, a political separation? The resolution to which I have just now alluded was a resolution passed by the London Corresponding Society, and is as follows: 'That during 'the ensuing session of parliament, the general committee of this so- 'ciety do meet daily, for the purpose of watching the proceedings of 'the parliament and of the administration of the government of 'this country. And that upon the first introduction of any bill, or 'motion inimical to the liberties of the people, such as, for LANDING 'FOREIGN TROOPS IN GREAT BRITAIN, or IRELAND, for repealing 'the HABEAS CORPUS ACT, for proclaiming MARTIAL LAW; 'or for PREVENTING THE PEOPLE FROM MEETING IN SOCIETIES 'FOR CONSTITUTIONAL INFORMATION, OR ANY OTHER INNOVA- 'TION of a similar nature; that, on any of these emergencies, the 'general committee shall issue summonses to the delegates of each di- 'vision, and also to the secretaries of the different societies affiliated 'and corresponding with this society, forthwith to call a GENERAL 'CONVENTION OF THE PEOPLE, to be held at such place, and in 'such a manner as shall be specified in the summons, for the pur- 'pose of taking such measures into their consideration.

'Resolved—That the preceding address and resolution be signed 'by the chairman, and printed and published.—J. MARTIN, *Chair-* '*man.* T. HARDY, *Secretary.*'

Upon these resolutions, though circulated throughout the united kingdoms, no prosecution has been grounded. Are we not then to infer, either that the Secretary of State has been criminally negligent of his duty, and that though he crushes sedition in Scotland, he tolerates it in England; or, for upon no other principle can he be excused, that the resolutions and the publication of them is perfectly harmless, and that the code of Scotland which marks them out as objects of punishment, like that of Draco, is written in blood.

Gentlemen, during my trial a principle has been laid down by the Lord Justice Clerk, which I deem to be in the highest degree, reprehensible, as it strikes at the root of that confidence which all men should repose in law, and of that security which all men have a right to expect from it. The Lord Justice Clerk declared that the judges had a *discretionary* power in annexing the punishment to the particu-

lar crime of ſedition. Had a judge in England held a ſimilar doctrine, the judgment ſeat would have tottered under him. If law be a certain rule of action, defining the offence and annexing the puniſhment, the degree and nature of the puniſhment ſhould be ſpecified, with equal preciſion as the degree and nature of the offence; otherwiſe we hold our freedom as mere *tenants at the will* of a judge, and not as we ought, by the known and explicit declaration of the laws. Lord Camden, the firſt law authority in England, has ſaid, that, 'DISCRETION IS THE LAW of tyrants; in the beſt men it is caprice, 'in the worſt it is every folly, vice, and infirmity to which human 'nature is liable.

Gentlemen, let not the word *diſcretion* miſlead you. *Legal diſcretion* is not the *arbitrary* diſcretion of the judge. No; it is, as well defined by Lord Coke, *diſcernere per legem quid ſit juſtum*, "to diſcover through the medium of the law that which is juſt and proper." "Judges muſt determine," (ſays the preamble to an old ſtatute of Henry VII.) "not by the crooked cord of diſcretion, but by the golden met-wand of the law." A beautiful expreſſion, and full of intrinſic wiſdom.

"*Miſera eſt ſervitus*, (ſays Lord Coke), *ubi ius vagum atque incognitum eſt*:" "wherever the law is vague and uncertain, the people are in a ſtate of wretched ſlavery." And that law is certainly vague and uncertain, which not ſpecifying the puniſhment as well as the crime, leaves it to the arbitrary diſcretion of the judge.

Gentlemen, my feelings, my exertions, and my ſtate of health have exhauſted me.

Lord Hendefland. You may ſit down Mr. Gerrald, and take a little breath.

Mr. Gerrald. I thank your lordſhip.

(Mr. Gerrald having reſted a few minutes proceeded as follows:)

Gentlemen, I truſt that I have now proved to your conviction the general purity of my intention, of which the object was to carry into execution, a conſtitutional reform in a peaceful manner; that however we may differ as men and citizens upon ſpeculative principles of government, yet the doctrines which I have advanced are founded upon the great and immutable principles of reaſon and of truth; that they are the ſentiments of the moſt revered writers, Locke, Sydney, Jones—that even Mr. Pitt and the Duke of Richmond formerly *profeſſed* to act upon them; that they are perfectly congenial to the ſpirit of the Anglo-Saxon government, and not in a great degree differing from the principles of the old conſtitution of Scotland, as Dr. Stewart has proved to you; that our peaceful reſolution of obtaining a reform was never violated by our practice, as the teſtimony of Sheriff Davidſon evinces; for, when aſſailed by the civil power we repelled not force *by* force—that the officers of the law violated the law in their illegal aſſault upon our perſons; and that even *then* ſuch was our deſire to pre-

ſerve the public peace, that we choſe rather to *ſuffer* than to *act*;—though we could have acted under the ſhelter of thoſe laws which we are falſely charged with having a deſign to ſubvert.

Men whoſe rights and ſecurity are interwoven with our own, advert, I beſeech you, to the circumſtances of our diſperſion. The firſt magiſtrate in this city, attended by a poſſe of conſtables, enters the convention hall, when the members who compoſed that convention were aſſembled upon a legal principle, for a conſtitutional purpoſe, and conducting themſelves in a calm and peaceful manner. Without reading the riot act, for which indeed, he could have no pretext from the object and conduct of the meeting, he forcibly drags the preſident from the chair and diſperſes the convention. At a future day, when a meeting is advertiſed to take place, not as the BRITISH CONVENTION, but of THE FRIENDS OF THE PEOPLE, the magiſtrates of Edinburgh, attended by the town guard block up the paſſage to the houſe which we had hired as a place for our calm and peaceful diſcuſſion, and, though not the ſlighteſt appearance of tumult exiſted, *forcibly* prevent the members from aſſembling.

Gentlemen, if the principle upon which theſe magiſtrates acted be a principle authoriſed by any human code, I ſay that its operation and effect muſt be the baſement of the human ſpecies and the extinction of civilized ſociety. It diveſts us of the right of exerciſing our power of reaſon, and places us in a ſituation beneath, the beaſts that periſh. If the magiſtrate of any country makes *ſuppoſed principles* and not *actions* the object of coercion; if upon his own looſe conſtructions and ſpeculations of danger he commits outrage, under pretence of preventing it; if inſtead of arguing from the conſequence to the principle, he inverts every rule of right reaſon, and infers the conſequence from what he thinks proper to *adjudge* the principles, the ſafety and freedom of human action is at an end. In ſuch caſe the magiſtrate takes upon himſelf to determine that which is undeterminable; to mark as an object of puniſhment not a preſent and actual, but a future, poſſible, and contingent conſequence; and, by puniſhing motives, which have not diſplayed their qualities by their effects, to arrogate to his own limited and ſhort-ſighted capacity a privilege which belongs only to Eternal Omniſcience.

Feeble, indeed, muſt be that civil government which depends for ſupport, upon every trivial occaſion, upon the aid of the military arm. But, in the caſe alluded to, we had at leaſt one conſolation; the ſoldiery who interpoſed were not a foreign but a Britiſh ſoldiery; and I truſt, that however the latter may be, for a time, deluded, they will recollect, upon all great and trying occaſions, that though neceſſity may have made them ſoldiers, yet ſociety has made them citizens, and nature has made them men. But not only are the principles, which I defended, pure; but even had they been otherwiſe, the evidence, I affirm, which has been produced in order to

fix them upon me, has been incompetent to its avowed purpose. Not the slightest evidence has been afforded, that the convention either published, or caused to be published by their authority, these scrolls of paper attributed to them as their minutes. They never authorised the publication of any speeches which were made in the Convention; nor does it appear, by any testimony, that the speeches printed in the Gazetteer were identically the speeches delivered in the convention. On the contrary Ross, the short-hand writer, swears that he frequently inserted, from his own mind, words and sentiments which never fellf rom the speaker. There is no proof that the motion attributed to Mr. Sinclair, which is the great ground for criminating me, ever passed the Convention; and even if it had, an attempt to identify that motion with the paper produced, should certainly have preceded its being produced in evidence. Why was this attempt not made? The reason is obvious, it must, of necessity, have failed. For was it not proved to you, that all Sinclair's papers which were seized, were thrown into a loose bundle, unsealed, tossed for a considerable time about the sheriff's office, in a state in which it was very easy for any person to have inserted other papers not belonging to Mr. Sinclair, consequently all possibility of proving the identity of the papers absolutely destroyed.

With respect to the speeches attributed to me, not one witness would identify upon oath any one single passage which they contain. And even Cockburn, whose testimony upon that point is the strongest, declares, that he has only a general loose recollection of what passed; a ground certainly too scanty and insufficient for the conviction of a man whom the laws of his country *presume to be innocent*; and which presumption can never be destroyed but by the establishment of stronger proof. "*Stabitur præsumpioni donec probitur in* "*contrarium:* The presumption stands till the contrary is proved." *Co. Litt.*

But the particular circumstance to which I beg to chain down your attention, is the assertion of the public prosecutor, that if you were convinced that my intentions were pure, you were bound in duty to pronounce my acquittal. Yes, gentlemen, this is the solid rock of my defence; the purity of the intention by which I was actuated. Could any thing but an ardent love of truth, and a desire of promoting the happiness of my fellow-creatures, have induced me to brave the present prosecution, and by dispelling the mist of prejudices which darkens their understandings, promote the happiness even of my prosecutors themselves? In this glorious though arduous undertaking, by what possible motives of gain or ambition could I have been actuated? Examples have not been wanting of *men of whom the world was not worthy*, who have fallen victims to an active and zealous virtue; but their fate will never deter firm and well regulated minds from the performance of that which they will consider as the most sacred of duties, the fulfilment of their

engagements to their oppreſſed and inſulted country. Theſe were the ſentiments which actuated the conduct of our common maſter when he wept over the city. "O Jeruſalem, Jeruſalem! thou "that ſtoneſt the prophets, and ſlayeſt them that are ſent unto "thee; how often would I have gathered ye even as the hen ga-"thereth the chickens under her wing, but ye would not!"

In every relative ſituation of life, we ſhould do our duty, however hazardous, and leave the conſequences, which muſt be ultimately beneficial, to the ſupreme diſpoſer of all human events.

Gentlemen, when you conſider that one great object of the Convention was to promote a more cloſe and ſincere union between England and Scotland, you cannot reaſonably convict, as a diſturber of the public peace, any man engaged in ſo laudable an undertaking. Yes, it is our pride and our boaſt that the extinction of thoſe national prejudices which have too long diſturbed and diſgraced both parts of the kingdom, was one great motive of our honeſt exertions. And, ſurely, our time is far better conſumed in ſtrengthening the cement of affection which, as inhabitants of the ſame iſland, it is ſo natural for us to feel, than in waſting and exhauſting ourſelves in the wrangles and contentions of the continent, by which we abandon our local advantages as in Flanders, and ultimately expoſe ourſelves to become the prey of ſome foreign or domeſtic invader. To atchieve mighty conqueſts, is the lot of few; becauſe few there are, who have either ability or opportunity to obtain them. But to cheriſh and deſſeminate the principles of peace and good will towards all men, is certainly the duty of all, becauſe it lies within the power of all, and muſt contribute to the happineſs of all. Moderate talents, ſteady exertion, and good intentions are fully adequate to this end. This was all to which the members of the Convention made pretence; and they repoſe themſelves with confidence upon the judgment which their country may paſs upon their conduct, whether the powers which they diſplayed, and the means which they adopted, were not well calculated for its attainment.

The Solicitor General, indeed, during the courſe of this trial, has diſtinguiſhed me by a marked and particular compliment; but it was coupled with a charge, that, if I am guilty, muſt render me doubly ſo; that my efforts were exerted to diſturb the peace of my country: No, gentlemen, whatever portion of talents God has thought proper to confer upon me has never yet been proſtituted to ſo infamous a purpoſe, and I turn with horror from a compliment to my underſtanding, which can only be purchaſed by the extinction of every generous ſentiment of the heart, and the ſacrifice of all things that are ſacred among men.

Gentlemen, when I look forward to the political horizon, the proſpect ſeems awful and gloomy to a degree, at which the beſt men muſt ſhudder, and the ableſt men muſt feel themſelves incompetent to deſcribe. Every thing is turbid and portentous. Indeed a black-

er cloud never hung over this island. Those who are versed in the history of their country, in the history of the human race, must know that rigorous state prosecutions have always preceded the æra of convulsion: and this æra, I fear, will be accelerated by the folly and madness of our rulers. If the people are discontented, the proper mode of quieting their discontents is, not by instituting rigorous and sanguinary prosecutions, but by redressing their wrongs, and conciliating their affections. Courts of justice, indeed, may be called in to the aid of ministerial vengeance; but if once the purity of their proceedings is suspected, they will cease to be objects of reverence to the nation; they will degenerate into empty and expensive pageantry, and become the partial instruments of vexatious oppression.—Whatever may become of me; my principles will last for ever. Individuals may perish; but truth is eternal. The rude blasts of tyranny may blow from every quarter; but freedom is that hardy plant which will survive the tempest, and strike an everlasting root into the most unfavourable soil.

Impressed with the justice of these sentiments, dungeons, fetters, exile, carry no horror to me; for I say, with the immortal Sydney, 'though I have a particular love to my country, of which, I hope, 'that I have given some testimony; though I think that being exiled from it is a great evil, from which I would redeem myself 'with the loss of a great deal of my blood; yet, when that country 'of mine, which used to be esteemed a paradise, is now like to be 'made a stage of injury; the liberty which we hoped to establish 'oppressed; the best of our nation made a prey to the worst; the 'parliament, court, and army corrupted; the people enslaved; all 'things vendible, and no man safe, but by such evil and infamous 'means as flattery and bribery; what joy can I have in my own 'country in this condition? Is it a pleasure to see all that I love in 'the world sold and destroyed? Shall I renounce all my old principles, learn the vile court arts, and make my peace by bribing some 'of the crew? Shall their corruptions and vice be my safety? Ah! 'no; better is a life among strangers than in my own country upon 'such conditions. Whilst I live I will endeavour to preserve my 'liberty; or, at least, not consent to the destroying of it. I hope 'I shall die in the same principles in which I have lived, and will 'live no longer than they can preserve me. I have in my life been 'guilty of many follies, but as I think of no meanness. I will not blot 'and defile that which is past, by endeavouring to provide for the 'future. I have ever heard in my mind, that should God cast me 'into such a condition as that I cannot save my life, but by doing an 'indecent thing, he shows me the time is come when I should resign 'it; and when I cannot live in my own country, but by such means 'as are worse than dying in it; I think he shows me that I ought to 'keep myself out of it.' *See Sydneys Letters.*

Gentlemen, I am in your hands, I feel not the slightest anxiety: if it would promote the cause, I would cheerfully make the sacrifice

for, if I perish on an occasion like the present, out of my ashes will arise a flame to consume the tyrants and oppressors of my country.

Moral light is as irresistible by the mind, as physical by the eye. All attempts to impede its progress are vain. It will roll rapidly along; and as well may tyrants imagine, that by placing their feet upon the earth they can stop its diurnal motion, as that they shall be able, by efforts the most virulent and pertenacious, to extinguish the light of reason and philosophy, which happily for mankind is everywhere spreading around us.

Surely the experience of all ages should have taught our rulers, that prosecutions can never efface principles; and that the thunders of the state will prove impotent when weighed against patriotism, innocence, and firmness. Whether, therefore, I shall be permitted to glide gently down the current of life, in the bosom of my native country, among those kindred spirits whose approbation constitutes the greatest comfort of my living, or, whether I be doomed to drag out the remainder of my existence amidst thieves and murderers, a wandering exile on the bleak and melancholy shores of New-Holland, my MIND, equal to either fortune, is prepared to meet the destiny that awaits it. *Seu me tranquilla senectus.*

" Expectat, seu mors atris circumvolat alis,
" Dives, inops, Romea, seu forsita jussit." HOR.

To be torn a bleeding member from that country which we love, is indeed, upon the first view painful in the extreme; but all things cease to be painful, when we are supported by the consciousness that we have done our duty to our fellow creatures? and a wise man rising superior to all local prejudices, if asked for his country will turn his eyes from 'this dim spot which men call earth, and will point, like Anaxagoras, to the Heavens.' MILTON.

Gentlemen, my cause is in your hands.—You are Britons—You are freemen.—Nothing more therefore is necessary to be said. You have heard the charge, you have heard the evidence. And you know the punishment which follows upon conviction. Weigh well, then, whether the charge itself involves any guilt; whether the evidence produced *affixes* that charge upon me; and above all, whether, in case of conviction, the punishment which I am to suffer, is not more than proportionate to the offence.

Before I take my leave of you this night, perhaps for ever, let me remind you, that justice is in every situation, and in none more than that of a jury, to be administered in mercy. Upon your strict attention to this grand moral maxim, depends your own final doom and unalterable allotment, and to those who refuse to practise it 'the throne of mercy will be inaccessible, and the Saviour of the world will have been born in vain.' *Rambler*.

Lord Justice Clerk.

Gentlemen of the jury, you have heard a great deal, and I will

not keep you much longer, becauſe I conſider it as very unneceſſary, in ſpeaking to gentlemen of your ſound ſenſe and underſtanding; you have given very particular attention, and are as able to judge of it as I am. The libel has been found relevant, after the moſt deliberate diſcuſſion, by counſel at great length; and it was alſo conſidered very fully from the bench: it was found relevant to infer the pains of law, and is now ſubmitted to you, to try whether the pannel is guilty of the crime libelled, yea or no.

Gentlemen, the crime charged is ſedition, and a very heinous crime it is; and nothing can ſtrike more at the peace and quiet of ſociety, and indeed it tends to ſubvert ſociety altogether. The public proſecutor, in juſtice to the pannel, that he might be prepared for his defence, has charged different facts and circumſtances, from which he infers the crime of ſedition, and the libel concludes, 'all which, or 'part thereof, being found proven, he ought to be puniſhed with 'the pains of law,' which in this caſe is an arbitrary puniſhment: the meaning of this is, that although the public proſecutor libels a variety of facts and circumſtances, yet, if he brings a proof of ſuch facts and circumſtances as you ſhall be of opinion ſufficiently ſupport the charge of ſedition, you will find the pannel guilty, or the libel proven; and, if you think there is nothing to ſubſtantiate the charge, you will find the libel not proven, or find the pannel not guilty.

Gentlemen, the firſt thing you have to enquire into is, whether you think that meeting that denominated itſelf 'The Britiſh Con-'vention of the Delegates of the People aſſociated to obtain Uni-'verſal Suffrage and Annual Parliaments' was a ſeditious meeting; and if you think it is not a ſeditious meeting, then, to be ſure, you will acquit the pannel, becauſe what is charged againſt him is, the part he took in that ſeditious meeting; but if you think it is a ſeditious meeting, then you will enquire whether the pannel is acceſſary art and part or not.

Gentlemen, as to the firſt queſtion, how far there is evidence to eſtabliſh this convention of delegates to be a ſeditious meeting it will occur to yourſelves. Gentlemen, that there has been already, no leſs than two of your fellow-ſubjects convicted of the crime of ſedition as members of that convention, and accordingly condemned to tranſportation, and that there are other two indicted for the ſame crime but did not think proper to ſtand their trial, and they accordingly ſtand fugitated by a judgment of this Court, Mr. Callander and Mr. Scott; you have, therefore, gentlemen, the verdicts of two very reſpectable juries ſtamping upon this meeting the character of ſeditious.

Gentlemen, it has been ſaid, and much inſiſted upon, that it is contrary to the rights of mankind, in general, not to be allowed to apply to parliament. I don't ſay that is a criminal act; if it reſted there alone; but, Gentlemen, I would ſubmit to your own feelings it is not a matter that reſts upon evidence, but upon your own feel-

ings, as men, as members of ſociety, and as ſubjects of this kingdom, whether you feel any grievances that this country labours under, that ſhould entitle them to make ſuch a cry againſt the government of the country: for my own part (and I appeal to your own feelings if it is not a juſt obſervation,) I have always conſidered this country as the envy of the world at large, as the happieſt kingdom upon face of the earth; and I ſubmit to you, whether or not as much happineſs does not exiſt in this kingdom as ever did? Every man is ſure of enjoying every thing he has in perfect ſecurity: his life is ſecure, and his liberty is ſecure, by the laws of the country, and his property is alſo ſecure; he is abſolutely certain that nothing will be taken from him that he has any right to enjoy.

And I ſubmit it to you, whether or not even if there had been ground for complaints, it was a proper time to bring forward thoſe complaints; at a time when we were involved in a war with a ferocious and cruel nation, at preſent ſetting the reſt of Europe at defiance, and when the greateſt unanimity, among the ſubjects of this kingdom, is abſolutely neceſſary to put an end to that war; I ſubmit to you, whether any good member of ſociety, would prefer his complaint againſt the government of the country at ſuch a time. But if you feel as I feel, that the complaints are groundleſs, and that the country is living in a ſtate of tranquility, ſecure of their lives and properties againſt every attack whatever; I ſubmit to you, whether is that man innocent who calls the people together, and impreſſes their minds with ideas hoſtile to the government of the country, with ideas of mal-adminiſtration on the part of the king, the parliament, and the adminiſtrators of public affairs, to impreſs their minds with an idea that all is corrupt, and that a reform is abſolutely neceſſary, by annual parliaments and univerſal ſuffrage, a thing that never can be obtained by the conſent of Parliament; and if you conſider a moment, I am very ſure that if the people were to obtain it, they would themſelves feel the bad effects of it before a twelve month was over, and they would be glad to have the old conſtitution re-eſtabliſhed; and therefore, if perſons call ſuch meetings of the people together, I ſubmit to you, whether that is innocent, when the conſequence is alienating their affections from the king and conſtitution, and from the government of the country, exciting them to riſe up, and overturn the government by ſuperior force?

Gentlemen, it is ſaid, that the deſcription of their meetings calling themſelves citizens, dividing themſelves into ſections, making conventions of emergency, ſecret committees, and all the reſt of it, are innocent things in themſelves; and I don't think his majeſty's Advocate has laid them as a crime unconnected with any other circumſtance; but, gentlemen, the text is always beſt underſtood by the context; you are not to take this paragraph in the indictment by itſelf, but from the whole as laid and as proved you are to judge of the meaning and intention of the parties here; and when you find meetings eſtabliſhed in this country under denominations never

before known, as committees of emergency, of organization, of finance, and all the reſt of it; when you ſee that aſſumed at a period when we are in an open declared war with France, when we ken that is borrowed from the convention of France, and when you compare it with the whole of their conduct, particularly the reſolutions of that meeting and the ſpeeches, I ſay you will conſider, whether upon a fair conſtruction of the whole, they were not imitating France in the form of their government, and that the object of their meeting was, like France, to overturn the eſtabliſhed conſtitution, and put every thing upon the ſame footing with France, where ariſtocracy is reviled, the king reviled, and indeed where there is no conſtitution at all. That, gentlemen, is the great object of your enquiry; and when you attend to the whole of the reſolutions and motions, as they appear upon the face of the minutes which were recovered out of the hands of their own ſecretary, and compare them with the papers found in the poſſeſſion of Margarot, Sinclair, and Gerrald, and alſo, with the parole evidence that has been given in this caſe, you will judge whether upon the whole it does not appear to you, that theſe people were imitating the French Convention, and that they meant to follow the ſpirit of the French, in eſtabliſhing their form of government.

Gentlemen, there are a number of ſeditious reſolutions and ſpeeches in this indictment, and one of them a very capital one, which I think borders as near upon high treaſon as any thing I ever ſaw: "That this convention, conſidering the calamitous conſequences of any act of the legiſlature which may tend to deprive the whole, or any part of the people, of their undoubted right to meet, either by themſelves or by delegation, to diſcuſs any matter relative to their common intereſt, whether of a public or a private nature, and holding the ſame to be totally inconſiſtent with the firſt principles and ſafety of ſociety, and alſo ſubverſive of our known and acknowledged conſtitutional liberties, do hereby declare, before God and the world, that we ſhall follow the wholeſome example of former times, by paying no regard to any act which ſhall militate againſt the conſtitution of our country; and ſhall continue to aſſemble, and conſider of the beſt means by which we can accompliſh a real Repreſentation of the People and Annual Election, until compelled to deſiſt by ſuperior force." The language of this reſolution is too plain to need any illuſtration—it is abſurd to ſuppoſe that they meant to carry any thing by ſtrength of arms; for what could ſuch a ſmall number do againſt the military force of this country—twenty one is the number to precede the action; but that is not the number of people to be engaged in this action, for they were only the delegates of the people; and it appears that theſe delegates, when they opened their ſecret letters, were to convene their conſtituents and repair to the place of meeting. I hope there were not many of them; but if they had been allowed to go on, I dare ſay, they would have been found

to be the repreſentatives of a great many more than I could wiſh for.

Now, Gentlemen, when you conſider the whole of this reſolution, and the ſpeeches, and the ſealed letter to be given to each delegate, the contents of which is not to be known, and when the very emergency has happened upon which they were to meet (for the landing of foreign troops is one of them), is it poſſible for you to believe that it was merely a reform in parliament that they intended? If it was, there was no occaſion for any ſecrecy at all: but on the other hand, if a riſing of the people was intended, then I conceive that a committee of ſecrecy, and a convention of emergency is neceſſary and prudent, and the idea of a reform in parliament is all nonſenſe; for if that was their intention, they would have made their application openly to parliament, and parliament would have granted or withheld their petition.

Gentlemen, it is very obſervable that there is a blank in the minutes; now in order to ſupply that, there is a paper recovered from the poſſeſſion of Charles Sinclair, "That in caſe the miniſter, or any other member of either Houſe of Parliament, bring forward a motion for leave to bring in a Convention Bill, ſuch as was paſſed in Ireland, to prevent the people from meeting according to their juſt rights by the Revolution, the ſame motion ſhall be notice to the delegates to meet in convention to aſſert their rights."

Gentlemen, it is ſaid, that this paper is not authenticated, and to be ſure, if you think it is not you will lay it out of your conſideration: but in the firſt place, it was found in Mr. Sinclair's chamber, tied up in a handkerchief, and brought in a chaiſe along with Mr Gerrald and Mr. Margarot to the ſheriff-clerk's office. Mr. Mack generally had the keeping of the papers there; ſays he, I don't think I was there when the papers were brought in, but I came in very ſoon after; the examinations were going on, and it was put into my hand, the handkerchief was laid upon the ſheriff-clerk's table, the ſheriff was ſitting there, and the clerks, the procurator-fiſcal and ſo on. Is it poſſible to ſuppoſe that theſe perſons all men of character, would do that, in order to convict an innocent man, for which they ought to be hanged, by extracting evidence and putting falſe evidence in its place? Mack ſays, that he locked it up, and it was under his lock and key till it was opened and inventoried in preſence of Sinclair himſelf, and other perſons. This paper is marked at the back by Aitcheſon, and Aitcheſon told you, that he acted as aſſiſtant ſecretary, ſo that this paper is endorſed by Aitcheſon in character of ſecretary to the convention, and afterwards found in Sinclair's poſſeſſion, as he was the mover I think of the amendments upon Callander's motion. But, Gentlemen, that is not all, for here are two or three witneſſes tell you preciſely that it was debated in the convention, and reſolved on, that in certain caſes this convention of emergency were to meet,

and one of thoſe caſes is, if any bill ſhould be brought into parliament ſimilar to that which paſſed in the parliament of Ireland, and this is confirmed by the evidence of more than one or two witneſſes. Why, Gentlemen, this paper ſo well authenticated, found in the poſſeſſion of Charles Sinclair, brought to the ſheriff-clerk's office, committed to the care of the gentleman who is the uſual keeper of the papers in that office, and kept under his lock and key till they were opened before Mr. Sinclair himſelf, I ſubmit to you whether that is not very good evidence, that this paper (which is of the higheſt importance, and which borders upon high treaſon) is ſufficiently authenticated to your ſatisfaction; and indeed gentlemen, there is a great deal more than that, becauſe there is even Mr. Gerrald's firſt ſpeech, which is at ſuch great length in the indictment, of which Cockburn ſwears that he recollects that a number of paragraphs in it were delivered in the meeting, and he does not pretend to ſay that there is any thing materially different in the paper from what he heard in the meeting; though he will not identify the whole of it, he did not ſee any thing remarkably erroneous in it; that is, he could not ſay it was verbatim the ſame, but in point of ſubſtance he could not diſcover any difference. Then, Gentlemen, there is William Roſs, a member of the convention, who writes the ſhort-hand, he ſwears he took this ſpeech down in ſhort-hand, and from that publiſhed it in the Gazetteer, and the public proſecutor copied it from the Gazetteer: this is pretty good evidence to ſhew that that ſpeech was delivered in that meeting. This is the ſpeech, "I riſe to congratulate the convention," &c. (*reads from the indictment.*)

Now, gentlemen, in the firſt place, this is publiſhed in the Gazetteer, and taken by the public proſecutor *verbatim* from the Gazetteer, and is confirmed by the parole evidence, as alſo by the minutes of the convention, where you will find the ſubſtance of it; and I ſubmit to you whether there is not ſufficient matter to eſtabliſh this meeting to be a ſeditious meeting; and if you are ſatisfied that it is a ſeditious meeting, the next queſtion is, whether this pannel is guilty, actor, or art and part in the proceedings of ſuch meeting.

Gentlemen, the concluding of the libel is, that if he is found guilty, actor, or art and part of the crimes charged, that is ſufficient to infer the pains of law; and the law is, that if any unlawful act is committed where a number are concerned, one perſon may be more active in the commiſſion of the fact than others, but in the eye of the law they are all conſidered as guilty, art and part in the crime charged, and all liable to ſuffer the pains of law.

Gentlemen, I have anticipated a good deal of the evidence upon this head already. When you ſee Mr. Gerrald taking a very active part and making ſpeeches, ſuch as you have heard to day, I look upon him as a very dangerous member of ſociety, for I dare ſay he has eloquence enough to perſuade the people to riſe in arms.

Mr. Gerrald. Oh my lord!—My lord, this is a very improper

way of addreſſing a jury, it is deſcending to perſonal abuſe. God forbid that my eloquence ſhould be ever made uſe of for ſuch a purpoſe.

Lord Juſtice Clerk. Mr. Gerrald, I don't ſay that you did ſo, but that you had abilities to do it.

Gentlemen, he has no relation, nor the leaſt property in the country, but he comes here to diſturb the peace of the country, as a delegate from a ſociety in England to raiſe ſedition in this country: I ſay, he appears to me, to be much more criminal than Muir, or Palmer, or Skirving, becauſe they were all natives of this country.

Gentlemen, if you are ſatisfied that this meeting is a ſeditious meeting, I don't ſee how it is poſſible to avoid the conſequence of finding this pannel guilty art and part of the crime charged: but, Gentlemen, it is not my verdict that is to be returned, you will return ſuch a verdict as your own conſciences will direct.

Friday, March 14, 1794.—*Eleven o'clock.*

The Court having met purſuant to adjournment, and the names of the jury having been called over, they brought in the following

VERDICT.

EDINBURGH, *March* 14, 1794.

The above aſſize having been incloſed, made choice of the ſaid William Forbes to be their Chancellor, and the ſaid Peter Hill to be their Clerk, and having conſidered the criminal libel, raiſed and purſued at the inſtance of his Majeſty's Advocate for his Majeſty's intereſt, againſt Joſeph Gerrald pannel, the interlocutor of relevancy pronounced thereupon by the court, and the evidence adduced in proof of the libel, they all in one voice find the pannel Joſeph Gerrald GUILTY of the crimes libelled; in witneſs whereof, their ſaid chancellor and clerk have ſubſcribed theſe preſents, in their names, and by their appointment, place and date as above.

Signed WILLIAM FORBES, *Chancellor.*
PETER HILL, *Clerk.*

Lord Juſtice Clerk. Gentlemen, I am perfectly ſatisfied that you have given that attention to this caſe which it deſerved; and now you are at liberty to go about your buſineſs.

Mr. Gerrald, now is your time to ſpeak, if you have any thing to ſay.

Mr. Gillies. My lords, I have an objection to ſtate to this verdict. I need ſcarcely ſay that I mean no reflection upon the gentlemen of the jury who have delivered in the verdict, and who, I have no doubt meant to diſcharge their duty conſcientiouſly, to the beſt of their knowledge. I ſtate this objection with the more confidence, that it is not ſo much an objection to the words or to the form, as to the ſubſtance of the verdict. It is eſſentially neceſſary by the laws of this, and every other country, that the jury ſhould conſider the whole

evidence before them; and so much is this the case, that even if they do consider it, yet if the verdict does not expressly bear that they did so, your lordship knows better than I do that such a verdict is void. This verdict bears that the jury have "considered the criminal libel raised and pursued by his majesty's Advocate, for his majesty's interest, against Joseph Gerrald, pannel, the interlocutor of relevancy pronounced thereupon by the Court, and the evidence adduced in proof of the libel."

My lord, they ought also to have considered the defence which was stated, and the evidence adduced or referred to, on the part of the pannel; and they not only ought to have considered these in fact, but their verdict ought to have stated, that they did consider this evidence, and that they did take into consideration this defence.

But, my lords, this is not all. In a common case I know well, that, if a verdict is returned to your lordships, stating that the jury have considered the evidence before them, no proof can be received that they have not considered that evidence. It must be taken for granted that the jury have considered it, as the verdict states that they have done so. The evidence of the verdict itself cannot in the common case be re-argued, because I cannot be permitted to lead a proof of what passed among the jury after they were inclosed. No such proof can be received, in opposition to what the verdict itself bears. But what is the case here? There was here a most voluminous body of written evidence laid upon this table: these writings, it was admitted by the candour of the public prosecutor, might, and I will be bold to say, did contain much evidence in favour of the unfortunate gentleman at your lordships' bar. This written evidence consisted of several hundred pages, which could not have been read in less than six or seven hours. I must say therefore, in point of fact, that the jury neither did, nor could consider the great body of written evidence that was laid before them. If I saw man in this room last night, and if I see him here again this morning, I cannot believe that he has been at Botany Bay in the interim; in the same manner, if a jury inclose for twenty minutes, and afterwards return and say they have considered the body of written evidence, which it must have taken several hours to consider, I cannot believe them: we know that the fact must be otherwise; and the proof which I offer is complete, that the jury were only inclosed for twenty minutes, a space of time in which it was not possible for them to have read the evidence which was laid before them, and which it was their duty to consider. It was the more necessary for the jury to have considered this body of written evidence, because the pannel did not take the advantage of a counsel to state his defence; and, however great his talents may be, he is not, he cannot be possessed of that legal knowledge and of those professional habits necessary to enable any man to comment upon evidence. It was still the more necessary for them to consider this written evidence, as the public prosecutor admitted before them, that it might contain a great deal of exculpatory proof,

upon conſidering which, I am entitled to conclude, that the jury would either have found this gentleman not guilty, or have returned a ſpecial verdict, finding part of the crime libelled on proved, and part not proved. I need not enlarge upon what I have now ſtated. The jury were bound by every principle of juſtice, by every rule of law to conſider this evidence; and I offer to prove, that they did not conſider it, that they were incloſed only twenty minutes, a ſpace of time in which it was impoſſible for any human being to conſider it.

Mr. Solicitor General. My lords, I ſhall trouble you with a very few words in anſwer to the objections ſtated by my brother. The firſt is, that the verdict does not ſpecially bear that the jury had conſidered the evidence on the part of the pannel. It is a pretty good anſwer to that, that there was no evidence adduced on the part of the pannel; the only evidence that was adduced, was on the part of the proſecutor, upon which evidence the pannel was willing his defence ſhould reſt. The next objection is, that the verdict bears that they have conſidered the evidence adduced in proof of the libel, when it was impoſſible they could have done ſo, from the time that they were incloſed. My lord, it was perfectly unneceſſary that they ſhould conſider every word of this voluminous body of evidence. The evidence which I founded upon on the part of the proſecution could be conſidered in five minutes, as well as in five years. And as to the pannel, I do not remember that he founded upon any one part of it; and if he did, I am ſure the jury had a perfect opportunity of conſideration.

Mr. Clerk. My lords, I ſhall trouble your lordſhips with but few words, and before I begin, I muſt take the liberty of making the ſame profeſſion that Mr. Gillies did, that I have no doubt but this jury meant to diſcharge their duty moſt conſcientiouſly and moſt faithfully; but a jury of the moſt honeſt as well as faithful men may be miſtaken in the diſcharge of that duty.

My lords, I muſt in the firſt place ſpeak with reſpect to what Mr. Solicitor General ſaid, that there was no evidence adduced on the part of the pannel. It is true there was not; but he made a defence, and a very long and able defence it was, and there is nothing in that verdict which ſhews that the jury have taken that evidence into conſideration.

With regard to the next point, it is very true that the moſt material parts of that evidence might have been comprehended in a very ſmall compaſs; but how was this matter to be determined? It could only be determined by reading over the whole of the evidence; and the more ſo, becauſe the greater part of that evidence was incompetent to be produced, and ought not to have been produced, inaſmuch as they referred to a period long before the pannel had any connection with the convention. My lords, the public proſecutor himſelf ſaid it might comprehend a great deal of exculpatory matter — after that conceſſion was it not their duty to read through that evidence in order to diſcover that exculpatory matter? My lords

it is ſaid that he did not found upon theſe papers: it is true he did not; but he made a defence of three hours and a half, in which he exhauſted himſelf upon other ſubjects, leaving it to the jury, truſting that they would ſupply the defects of his evidence, and that they would conſider the written evidence lying before them.

Lord Juſtice Clerk. What do your lordſhips ſay to this?

Lord Henderland. My lord, the jury in returning their verdict were not bound to ſay any thing farther than that upon conſidering the evidence they found ſo and ſo. With reſpect to the pannel's defence, he was fully heard, and it is impoſſible to ſuppoſe it was not conſidered. With reſpect to the evidence that was lying upon the table, they have formed an opinion, a conſtitutional opinion, which they were entitled to form, and we are bound to preſume that it was partly formed upon that evidence.

Lord Eſkgrove. My lord, I think, that with reſpect to this verdict, the jury have returned a very proper verdict; for my lord, it is neither neceſſary nor cuſtomary to ſay, that they conſidered the arguments uſed, either on one ſide or the other—if they had ſaid that they had conſidered what the pannel had ſaid at the bar they muſt alſo have ſtated that they had conſidered what his majeſty's Solicitor General had ſtated in ſupport of the charge. They are ſuppoſed to have conſidered both, but it is not cuſtomary to ſtate more than they have here ſtated; you muſt believe that the jury conſidered every thing proved and every thing ſtated on both ſides. As to what time they took I know not, nor is it my duty to enquire; they would take as much time as they thought proper; they have declared that they did ſo; and I am of opinion that there is no relevancy in the objection.

Lord Swinton. My lord, the jury have ſtated in this verdict, that they conſidered all that was laid before them, the libel, the interlocutor of relevancy, and the evidence. It is not uſual for them to ſay that they have conſidered the arguments. As to the time that they took to conſider we have no right to enquire: they could look at the material parts of the evidence in a very few minutes; and whether they looked at it or not we have no buſineſs to enquire; if it was on their memory it was ſufficient. I am convinced that they have acted honeſtly and faithfully, as they were bound by their religion and their oath to do.

Lord Dunſinnan. My lord, an intelligent and reſpectable jury have, upon their great oath, returned a verdict bearing to proceed upon the evidence, and the only evidence that was laid before them, which was the evidence in ſupport of the proſecution: every body preſent knows that there was none offered on the part of the pannel, and they could not conſider evidence which was not laid before them. As to what fell from the pannel, they have no doubt conſidered it; and they have returned a verdict which appears to me a very proper one.

Lord Abercrombie. I am of the ſame opinion.

Lord Juſtice Clerk. My lords, I ſhould have been very much ſurpriſed if this pannel ſhould be acquitted upon a blunder in a verdict; but the verdict appears to me to be moſt unexceptionable, and the objection is founded in a miſapprehenſion of the caſe altogether: the pannel and his counſel declared they had not any proof; if they had any proof by parole evidence, it was their duty to have brought it forward, and if they had meant to have founded upon the written evidence on the table, they ought to have pointed out what parts of that evidence they meant to found upon; and therefore you muſt conſider that he had no evidence to bring in exculpation, and all that the jury had to conſider, was the evidence on the part of the proſecution. The public proſecutor libels upon a bundle of papers, and becauſe two or three hundred pages of writing are produced and all, ten lines of that is neceſſary to found upon in ſupport of the charge, can it be neceſſary that the jury ſhould go through it all? In caſes of forgery it may be neceſſary to produce very long writings, and perhaps only two or three lines of it may be founded upon for the ſupport of the charge; but can it be ſuppoſed that it is neceſſary for the jury to read over the whole of it? The thing is too groſs to be liſtened to by any court whatever. The jury conſidered all that it was neceſſary for them to conſider; they conſidered the libel, the interlocutor of relevancy, and the proof on the part of the proſecutor. Then they ſay there was a long defence, and they ſhould have ſtated that they had conſidered that.—My lords, the jury did their duty in not conſidering that defence: it was a defence againſt the relevancy of the indictment, and the firſt two hours of this ſpeech went to ſhew that all that he had done was innocent. But, my lords, was it not offered to the Court in a very long pleading and found relevant? I apprehend the jury have done their duty properly: they have a power to be ſure, if they think proper, even after the libel is found relevant, they may acquit, but the duty of a jury and of a judge are diſtinct; it is the buſineſs of the Court to determine the law as to the relevancy of the libel, and of the jury to judge of the fact; and as it was found relevant by the Court, the jury had no more to do but to conſider the evidence, and, in my opinion, they have returned a very proper verdict, finding the pannel guilty.

Mr. Gerrald, if you have any thing to ſay, now is the time.

Mr. Gerrald. My lord, I have very little to ſay. I am as little hurt, as I am ſurpriſed at the verdict returned, inaſmuch as I find that the public proſecutor himſelf, in the Houſe of Commons, anticipated the fate which I was to meet; but my lord, I truſt that a moral and enlightened world, collectively, will do juſtice to the purity of the motives which have actuated my conduct; and I glory in being the advocate of a cauſe, with which is complicated truth, juſtice and freedom, which I know *muſt* and *will* ultimately triumph.

Lord Juſtice Clerk. Your lordſhips will now proceed to give your

opinions upon the punishment which you think in this case ought to be inflicted.

Lord Henderland. My lord, the pannel at the bar is found guilty of the crime libelled, which is sedition. And my lord, after the very able argument and sound constitutional law which you heard from the Solicitor General, it would be highly improper in me, as it would be irksome to your lordships, that I should enlarge upon the nature of this charge.

My lord, we are to consider of the punishment due to that crime, of which we have had so many miserable examples before us, that I can propose nothing else but this, that the prisoner shall be recommitted to prison, and there to remain till an opportunity shall offer for carrying the sentence that I propose shall be pronounced against him of banishment, by transportation, for the space of fourteen years, into execution.

My lord, it appears to me, that by no means an adequate punishment can be inflicted for this offence; and even if this has the appearance of severity, which I cannot think it has, it is the only judgment that could be pronounced in such a case, to secure the safety of this country from the commission of such crimes. I am convinced that the people of this country, who are an intelligent, an acute, and a sensible people, however much they may be led away by seditious persons, when they come to reflect coolly, dispassionately, and fairly, upon the nature of this crime, upon the danger that arises from the commission of it, and upon the security and the safety they enjoy, by the exercise of that discretionary power, which is vested in this Court by law, will be of opinion that the judgment we pronounce this day is a just and a proper one.

Lord Eskgrove. My lord, I am extremely happy, that this gentleman has had a full and a fair trial, and that he has acted with the propriety of calling in the assistance of able counsel, who have done honour to themselves, and justice to their client; and my lord, I understand (for my state of health did not permit me to remain in Court the whole of the time) that the gentleman himself is a man of great abilities, and that he was indulged by the Court, in stating every thing that he wished to state. My lord, I apprehend, that after the arguments we have heard, there can be no doubt that this Court, by the law of this country, whatever it may be in other countries, are authorised to inflict the punishment of banishment by transportation, and that this is the only proper punishment that can be inflicted for the crime here charged, to prevent others from committing the same crime, and to keep peace and tranquility within this part of the kingdom. And, my lord, in consequence of what your lordships have uniformly pronounced upon cases of this kind (which I am heartily sorry there has been occasion for), I cannot see any thing in this case that could authorise me to deviate from the same

mode of punishment that your lordships have inflicted in the other cases.

My lord, as to this verdict of the jury, by which he is found guilty, taking under consideration all the circumstances, I am of the same opinion that has been given by my honourable brethren.

Lord Swinton. My lord, in considering this crime about which your lordships have heard so much, the more I consider, and the more I turn my mind to it, the more I am convinced that this Court did right originally in imposing the sentence that they did impose. My lord, in considering this case, and comparing the punishment with the crime, I hardly know what punishment is adequate to it. It was well said by one of the ablest and greatest men that ever lived, that sedition was like Pandora's box, it contains every evil, it contains, every vice. My lord, it is said, that he is to be sent among pickpockets, thieves and robbers, but my lord, this crime is not to be compared with theirs, it comprehends every sort of crime, murder, robbery, rape, every thing that is criminal. I think, my lord, the punishment has been proposed is the mildest that can be inflicted, and I hope will be sufficient to deter others from committing the same crime.

Lord Dunsinnan. My lord, the crime of which this unhappy man now stands convicted, is a crime for which, within a few months, two persons have been tried at that bar, who have been convicted, and upon those convictions, the court have pronounced the judgment of the law. My lord it would give me great pleasure if there were any circumstances in the case of this pannel that could distinguish it favourably from those upon which we have had occasion to pronounce judgment before; but the circumstances of this case tend rather to aggravate it. My lord, he is one of those persons who came into this country, for the purpose of exciting civil discord, by inflaming the minds of the people. We have had an opportunity of seeing that he possesses talents, which render him exceedingly capable of mischief; the harangue which we heard last night, though addressed to the jury, was I believe rather intended for another part of this court; we saw that his political principles are extremely dangerous, and my lord, if there is any other country, which does not inflict such a punishment for such a crime, I am happy that I live in such a country as this; and if I were to propose any difference of punishment, it would be rather to increase than diminish it. I am of opinion, doubtless, that the same punishment should be inflicted in this case as in the former.

Lord Abercrombie. My lord, a legal objection was stated to the punishment now proposed; that objection was argued with uncommon ability, by the learned counsel for the pannel, and your lordships gave your judgment upon it. But, my lords, that legal objection was grounded upon this, that the punishment was too severe

for the offence of which he ſtands convicted by the unanimous voice of his country.

My lords, it has been ſaid, within theſe walls, that his intentions all along were innocent, that they were perfectly pure and honourable; and that had the ſame crime been committed in England, it would either have paſſed with impunity, or with a very ſmall puniſhment as impriſonment or pillory. My lord, upon that I ſhall ſay a very few words. With reſpect to the panrel's motives, I ſhall for a ment ſuppoſe that his intentions were pure and perfectly innocent; but even conſidering the caſe in that view, I muſt give it as my opinion, ſitting here as a judge, that it would afford no motive for a mitigation of puniſhment. My lord, we all know it is a fact, undoubtedly undeniable, that a miſtaken principle, either in religion or in politics, has often led the way with the beſt of intentions, to commit crimes of the deepeſt atrocity. My lord, the hiſtory of this country affords many inſtances and many examples of this kind; for example, in the caſe of the powder plot many of the conſpirators were men of character, Sir Everard Digby was one of the moſt accompliſhed, one of the moſt virtuous men in England, and my lord he was ſentenced to die as a traitor for the part he took in that plot; and on the eve of his execution he wrote a letter to his wife, in which he expreſſes himſelf in thoſe preciſe terms: "Now for my "intention, let me tell you that if I had thought there had been the "leaſt ſin in the plot, I would not have been of it for all the world: "and no other cauſe drew me to hazard my fortune and life but zeal "to God's religion."

My lord, this letter, written at that fatal period, by a man who was beloved by every perſon in Europe, leaves no room to doubt of the ſincerity of this confeſſion. Then my lords, as to this man who lives at the diſtance of two centuries from the commiſſion of that crime, will any perſon who now hears me ſay that the innocency of his intention or the purity of his motives ought to be urged as a reaſon againſt executing that ſentence?

My lord, I ſhall juſt take the liberty of ſtating, though I am ſorry to give any opinion upon ſuch a point, upon the moſt cool and deliberate obſervations, were I called to give my opinion upon the point, I would ſay, that if this conſpiracy, in which the unhappy man at the bar was an active leader, had been carried into effect; if that conſpiracy had been followed with entire ſucceſs, there is not a corner of this kingdom in which a degree of miſery and wretchedneſs muſt not have followed.

My lord, we have the example of our own times alſo; I need not remind your lordſhips of 1745 and 1715, when many men, who had acted with the beſt intention, died the death of traitors.

My lord, I ſay although the panel could have eſtabliſhed by the cleareſt and the moſt ſatisfactory evidence, that his intentions were all along perfectly innocent, and his motives perfectly pure, it would have afforded no ground whatever for mitigation of puniſh-

ment; but I am ſorry to ſay that I can diſcover no proof of ſuch innocence of intention. My lord, we in this world can only judge of the intentions of men from their actions; and viewing the actions of this pannel, no man of the leaſt obſervation can lay his hand upon his heart and ſay, that the evidence affords the ſmalleſt proof of ſuch purity of motive.

My lord, with regard to the other point, it is our province and our duty to judge of this and every other caſe by the law of our country; we have nothing to do with the law of any other country, and I cannot think that the law of England would ſuffer an offence of this magnitude either to paſs with impunity, or be puniſhed with a ſlighter puniſhment; and I heartily concur with the reſt of your lordſhips in the puniſhment that your lordſhips have propoſed.

Lord Juſtice Clerk. My lords, in comparing this caſe with the others I cannot find any thing that can poſſibly make it leſs criminal. My lord, tranſportation is, no doubt, a very ſevere puniſhment; we conſider it as the higheſt arbitrary puniſhment that the laws of this country can inflict; but I think it is no more than adequate to the offence which has been proved againſt this pannel, and of which he has been convicted by the verdict of a very reſpectable jury. My lords, I feel for the diſtreſſes of convicts as much as any man who hears me: but, my lords, the happineſs of the innocent part of mankind requires of us to puniſh the guilty and protect the innocent; and we cannot give that protection to the innocent part of ſociety unleſs we inflict adequate puniſhments upon crimes committed againſt ſociety.

My lords, in all theſe caſes, I was very ſenſible that tranſportation was a great puniſhment; but, after conſidering all the different puniſhments that the laws of this country can inflict, I did not ſee any one puniſhment we could inflict which could anſwer the purpoſe of checking this evil, unleſs it was by inflicting the puniſhment of tranſportation alone; any other puniſhment would have been a very imperfect one. Simple baniſhment from this country is not at all proper; long impriſonment is a thing not known in this country, and very hurtful to the country as well, becauſe we know a ſeditious perſon in priſon may do a great deal of harm. I cannot have the leaſt heſitation in thinking that the puniſhment of tranſportation for fourteen years is the leaſt that we can inflict in this caſe.

My lords, we have heard a great deal of the innocence of his intentions; but it was juſtly obſerved by my brother who ſpoke immediately before me, that taking his own account of the matter to be juſt, ſuppoſing that he has acted from principle, and that his motives are pure, I do ſay that he becomes a more dangerous member of ſociety than if his conduct was really criminal, and acting from criminal motives. A man acting from criminal motives

is not so dangerous a member of society as a man who thinks he is acting from principle; for when a man is so misguided in his principles he overturns society and government itself. I say *salus populi suprema lex*, and it becomes us, let his intention be as pure as they possibly can be, to remove that man from society, and put it out of his power to disseminate these dangerous principles. I don't know whether his principles are so pure as he professed or not, but if they are, I think it justifies this punishment just as much as if he had acted from the worst of motives, and therefore any other punishment would be insufficient.

The Clerk of the Court then read the following

SENTENCE:

The Lord Justice Clerk and lords Commissioners of Justiciary having considered the foregoing verdict, whereby the assize all in one voice find the pannel GUILTY of the crimes libelled: the said lords, in respect to the said verdict, in terms of an act passed in the 25th year of his present majesty, entitled, "An Act for the more "effectual transportation of felons and other offenders, in that part "of Great Britain called Scotland," ordain and adjudge that the said Joseph Gerrald be transported beyond seas to such a place as his majesty with advice of his privy council shall declare and appoint and that for the space of Fourteen Years from this date, with certification to him if after being so transported he shall return to and be found at large within any part of Great Britain, during the said fourteen Years, without some lawful cause, and be thereby lawfully convicted, he shall suffer death, as in cases of felony without benefit of clergy, by the law of England: and ordain the said Joseph Gerrald to be carried back to the Tolbooth of Edinburgh, therein to be detained till he is delivered over for being so transported; for which this shall be, to all concerned, a sufficient warrant.

(Signed) ROBERT M'QUEEN.

LIST OF EXCULPATORY WITNESSES.

Right Hon. Robert M'Queen, Lord Justice Clerk.
Sir Philip Ainslie, Bart.
Miss Charlotte Ainslie, daughter to Sir Philip.
Mrs. Watson, alias Rochead, widow of——Rochead, Esq. of Inverleith.
Mrs. Christian Dundas, sister to the Secretary of State.
Miss Dundas, niece to do.
Charles Hay, Esq. Advocate.
——Davidson, Clerk to Charles Hay, Esq.

Witneſſes to prove the charge in the declinature againſt Lord Juſtice Clerk.

Dr. Yule.

George Sinclair, ſon to the late Robert Manſon Sinclair, of Bidge End.

To diſprove the papers alledged to have been taken from Charles Sinclair; and to prove that the Meſſenger, Lyon, had refuſed to ſhow the warrant, although Sinclair had frequently deſired it, alledging he had orders from the Sheriff and Procurator Fiſcal, not to ſhow it.

John Pringle, Eſq. late Sheriff of the County of Edinburgh.

Harry Davidſon, Eſq. Sheriff-ſubſtitute.

To prove that they had delivered a paper to Gerrald, out of Charles Sinclair's papers, which he (Gerrald) claimed as his own, prior to Charles Sinclair's extra-judicial examination.

George Roſs, Clerk, Gazetteer-Office.

To prove that Gerrald was a member of the ſame Section with himſelf, and never once attended a meeting of ſuch Section.

APPENDIX

No. I.

THE caſe of Bailie was quoted on the ſame day, by the Lord Advocate in the Houſe of Commons, and the Solicitor General, in the Court of Juſticiary. The ſentence of the privy-council was appealed to as deciſive, but the caſe itſelf was brought forward by ſurpriſe, and has never been fairly ſtated to the public. Bailie had informed the Duke of Hamilton by letter, that the Duke of Queenſberry and the Marquis of Annandale (the former Secretary of State, and the latter Preſident of the Council) had tampered with him privately, to induce him, by promiſes of preferment, to accuſe the Duke of Hamilton and other noblemen, of a correſpondence with the French Court, and of a conſpiracy to eſtabliſh the Pretender on the Throne. The Duke of Hamilton communicated the letter to the Juſtice Clerk, by whom it was divulged to the privy-council, and on the complaint of the Duke of Queenſberry and Marquis of Annandale, Bailie was convicted for defamation and leaſing-making. The ſentence of the privy-council, as extracted from its records, is in the following terms:

'Parties and their advocates being heard at the bar and removed, 'the lords of his majeſty's privy-council have repelled, and hereby 'repel the dilators proponed by the defenders procurators as ſaid is, 'and have found and hereby find the within libel relevant to infer 'an arbitrary puniſhment, and proven by the defender's judicial ac'knowledgment at the bar, that the two letters libelled on were 'all his hand-writt and ſubſcryved by him, and therefore have de'clared and hereby declare the ſaid David Bailie to be infamous; 'and have baniſhed and and hereby baniſh him furth of the kingdom 'for ever; and have alſo appointed and hereby appoint and ordain 'the ſaid David Bailie to be tranſported to the Weſt-Indies, and to 'be in priſon ay and while he be tranſported, and have appointed 'and ordained and hereby appoint and ordain the ſaid David Bailie, 'before he be tranſported, to be [illegible] on the pillory at the Trone, 'and there to ſtand from eleven to twelve o'clock of the forenoon, 'and that upon ſuch a day and in ſuch a manner as the ſaid lords of 'her majeſty's privy-council ſhall think fit; and the ſaid David Bai'lie being called in did hear the ſentence publicly intimated to him 'accordingly.'

To thoſe acquainted with the hiſtory of the period, it will appear extremely probable, that Bailie was ſacrificed to the political friendſhip of two powerful families. Queenſberry had been baffled and defeated in the preceding parliament, where he preſided as Commiſſioner, and in which the act of ſettlement was ignominiouſly rejected. To remove and diſcredit the heads of the country party, he had actually recourſe to a fictitious plot, and employed Fraſer of Beaufort, afterwards Lord Lovat, to accuſe them of a correſpondence with the Court of St. Germains. (Macpherſon's Hiſt. Vol. ii. p. 284.) Whether we ſuppoſe that Bailie had been tampered with for the ſame purpoſe, or with Lockhart (Memoirs p. 76.) that he was employed by his kinſman Bailie of Jerviſwood to counteract and diſcredit the Duke of Queenſberry's plots, this at leaſt is certain, that his ſentence was carried in council by Queenſberry's party, in oppoſition to the Marquis of Tweedale's, and that the whole was a political conteſt and deciſion too infamous to conſtitute a precedent in a court of juſtice. See Lockhart.

But their ſentence was never carried into complete execution. Lord Fountainhall, who reports the caſe, obſerves, 'David conceiving himſelf injured; for if he had concealed it, then he might have been overtaken for miſpriſion and not revealing; and now, having diſcovered it, he is condemned as a defamer and calumniator, which makes his caſe hard; he reſolved to apply to the parliament for reviewing and reconſidering the council's ſentence as iniquitous. And, finding, that by the ſecond act of parliament, 2795, citations, during the receſs and intervals of parliament are to be iſſued out by a warrant from the lords of ſeſſion, he had prepared a bill to be given in to the lords, for ordering a reduction to be raiſed, under their ſignet, of the council's ſentence, for citing the Duke of Queenſberry, &c. to appear before the parliament, when it ſhall meet; but when his lawyers came to conſider the clauſe, they thought it imported a previous cognition and trial before the ſummons could be granted, by which the lords were ſummarily to hear and cognoſce if there was ground for iſſuing out the ſummons demanded; and in regard the ſeſſion was now riſing, and there was no time for taking ſuch a previous cognition, therefore the giving in of the bill was forborn.' Fountainhall, Vol. ii. p. 228.

The appeal, as Fountainhall afterwards obſerves, was then relinquiſhed, as it would not ſtop the execution of the ſentence. Whether it was afterwards lodged is uncertain; but in the ſucceeding parliament Queenſberry, when diſmiſſed from office, joined his ſtrength with the country party, on the expreſs condition that no enquiry ſhould be made into the pretended Scotch plot. (Macpherſon, 304.) To liberate Baillie, who, according to Lockhart, had undergone the pillory, an act was paſſed on his petition to parliament, ſuppreſſing any notice of his offence, or his ſentence, but ordaining him to be releaſed from priſon on procuring bail for 1000 merks Scotts, to ap-

pear, when called, in the High Court of Parliament. Unprinted Acts of Parl. 1704. The execution of the ſentence was therefore ſuſpended, and he was releaſed in conſequence of a compromiſe with thoſe who pronounced or obtained the ſentence, and who were conſcious that its exceſſive ſeverity, not to ſay its illegality, would not bear the teſt of a parliamentary examination. He for whoſe liberation parliament thus interpoſed by ſtatute, muſt have either been reputed innocent, or the victim of a ſentence that exceeded the legal meaſure of puniſhment.

The act itſelf is as follows:

21 *July*, 1704.

Her majeſty's High Court and the Eſtates of Parliament having heard the petition of David Bailie, priſoner in the Caſtle of Stirling, humbly ſheweth unto them, That whereas the petitioner has been a long time in priſon in the Caſtle of Stirling and other places, and that it is extremely prejudicial to his health to continue any longer in priſon, he being reduced to that weakneſs and ill ſtate of health, that he is ſcarce able to walk: and therefore humbly praying, that his grace and the eſtates of parliament would ordain him to be ſet at liberty, he always enacting himſelf to appear when called, as the ſaid petition bears; which being conſidered by her majeſty's court and the eſtates foreſaid, they, by their interlocutor thereon ordained the petitioner to be ſet at liberty, he finding caution, when called to appear before the parliament. In the terms of which interlocutor, and conform to the 6th act of the 9th ſeſſion of King William's parliament, William Lord Forreſter did before extracting hereof become bound as cautioner and ſurety for the ſaid David Bailie, petitioner that he ſhould, when called, appear before the ſaid High Court of Parliament, and that under the penalty of 1000 merks Scots money. In reſpect whereof her majeſty's High Commiſſioner and the ſaid Eſtates do ordain him, the ſaid David Bailie, to be ſet at liberty in manner foreſaid.

No. II.

Joseph Gerrald's Prayer, on the forcibly breaking up of the Convention in Scotland.

O THOU Governor of the universe! we rejoice that all times, and in all circumstances, we have liberty to approach THY throne; and that we are assured that no sacrifice is more acceptable to Thee, than that which is made for the relief of the oppressed. In this moment of trial and persecution, we pray that thou wouldest be our defender, our counsellor, and our guide. O be thou a pillar of fire to us, as thou wast to our fathers of old, to enlighten and direct us; and to our enemies a pillar of cloud, of darkness, and confusion.

Thou art thyself the great patron of liberty. Thy service is perfect freedom. Prosper, we beseech thee, every endeavour which we make to promote thy cause; for we consider the cause of truth, or every cause which tends to promote the happiness of thy creatures, as thy cause.

O thou merciful Father of mankind, enable us, for thy name's sake, to endure persecution with fortitude; and may we believe that all trials and tribulations of life which we endure, shall work together for good to them that love Thee; and grant, that the greater the evil, and the longer it may be continued, the greater good in thy holy and adorable providence, may be produced therefrom.—And this we beg, not for own merits, but through the merits of him who is hereafter to judge the world in righteousness and mercy.

THE END.